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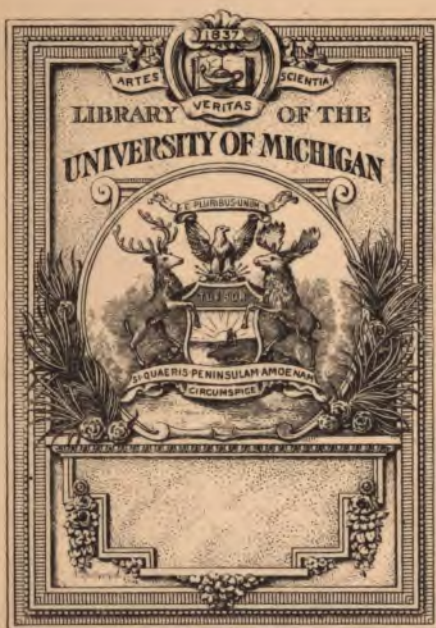
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**A
REVIEW OF THE LAWS
OF THE
UNITED STATES
OF
NORTH AMERICA,
THE
BRITISH PROVINCES,
AND
WEST INDIA ISLANDS:
WITH
SELECT PRECEDENTS AND OBSERVATIONS
UPON DIVERS
ACTS OF PARLIAMENT AND ACTS OF ASSEMBLY,
AND A COMPARISON OF THE
COURTS OF LAW AND PRACTICE THERE
WITH THAT OF
WESTMINSTER HALL.**

LONDON:

**PRINTED FOR WILLIAM OTRIDGE, NO. 134, AND
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M,DCC,XC.

ADVERTISEMENT.

MR. SMITH, observes in his History of *New York*, that no good general History of *America* can ever be expected, till Gentlemen of Leisure and Information will draw up *particular* Accounts of the *respective* Colonies with which they are intimately acquainted; and the same Observation applies as to their LAWS: The *United-*
A 2 *States*

States differing in their Constitution and Government and the Practice in the *British Provinces* and *West India* Islands, ALL, in some Degree, differing from each other, a Digest of their Laws and Method of Practice, or indeed any regular and exact Account of them can only be obtained by the Assistance of some able Practiser in *each*.

The EDITOR has, in *this Work*, received Assistance from *several* very respectable professional Characters in the *United-States*, and is endeavouring to
form

form an *additional* Literary intercourse adequate to the Purpose of a second *Publication* upon the Subject on a much wider Scale; and, which, as affording the *only means* of Information, will be more correct and of course more interesting and useful. The present Work, the EDITOR is conscious, can only be considered as an *imperfect Sketch* :—but as there exists, at present, no Treatise *expressly* upon the Subject, and the Intercourse is still considerable between the People of *Great Britain* and *America*, the EDITOR flatters himself that the
present

present Publication, under all its Imperfections, will be found of some service to Gentlemen of the Profession, as well as the Merchants of *both Countries*.

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C H A P I.

Cursory Observations upon the Laws of the United States in general, and particularly those affecting Foreign and British Debts, &c. &c.

THE Fundamental Laws of the *United States* are, as nearly as possible, analogous to those of *Great-Britain*, which are interwoven into the very texture of their constitution. The common law, together with the antient statutes of England were all either carried by the English Settlers into the American Colonies as their birth-right, or afterwards adopted by usage or positive acts of their respective Legislatures. This will appear from a reference to their several *Constitutions* formed at the great epoch of American independence.

Laws of the
United States.

New-Hamp-
shire and Mas-
sachusetts*.

NEW-HAMPSHIRE and MASSACHU-
SETTS in forming their governments ex-
pressly provided, "*That all laws thereto-
fore used should remain in force till altered.*"

Rhode-Island
& Connecticut.

RHODE-ISLAND and CONNECTICUT
retained their antient forms and laws.

New-York.

NEW-YORK declared that *such parts of
the common and statute law of England, and
acts of assembly as formed the law of the
Province on the 9th April, 1775, should con-
tinue the law of the Commonwealth.*

New-Jersey.

NEW-JERSEY followed implicitly the ex-
ample of New-York.

Pennsylvania.

PENNSYLVANIA made the declaration of
rights part of their fundamental constitution.

Delaware.

The DELAWARE State *reserved expressly
the common and statute law, as they had been
formerly adopted and practised.*

* Hutchinson, in his History of Massachusetts, has given a
particular account of the laws of the New-England States.

See an account of the laws of Connecticut in Peters's history,
pages, 63, 82, 282, 298, 299.

MARYLAND declared that her citizens ^{Maryland.} were entitled to the common and statute law of England, which had been used and approved in the province.

IN VIRGINIA the general web of their in- ^{Virginia.} dependence has been woven of the warp of the common law and the woof of antient statutes.

NORTH-CAROLINA enacted that the com- ^{N. Carolina.} mon and statute law theretofore used should continue in force.

SOUTH-CAROLINA declared by her ^{S. Carolina.} original association, that all laws then practised should remain till repealed.

GEORGIA adopted into her fundamental ^{Georgia.} constitution nothing more than the *Habeas Corpus Act*, but their great law expofitor (Walton) asserted from the bench, *That the law of England was studded into the Georgia system**. In fact they have been studded into all the American systems. The American youth still continue to read English law books, and the practitioners to quote them under the sanction of their judges

See Georgia Gazette, 13th May, 1784, and Chalmers's opinions page 156. and Pownall's administration of the Colonies, vol. V. P. 46.

who receive them with all due respect and deference. The general jurisprudence of both countries is the same, and the difference even in their several forms of government, is, perhaps, much less than people at first sight are apt to imagine.

Difficulties of
the law here.

The law, as a practical profession, is attended in the States with considerable difficulties, and almost equal embarrassment to the professors and the client.

In new governments, "says Raynal," the laws cannot be too simple, uniform, and exact. The present government of the United States being only a reformation of that feudal system they borrowed from Great-Britain, still retains many usages equally oppressive and absurd. Hence proceeds a motly mixture, numerous exceptions to, and various interpretations of one original law, often clashing and contradicting each other.—The new law at variance with the old.—To the obscurities and difficulties of the common law of England, the States of America have added accumulated difficulties, by a variety of new laws adopted to the different changes of manners, places, and times; as the common law itself is nothing but the practice

tice and determination of courts on points of law drawn into precedents, where the circumstances of a country, and a people, and their relation to the statute and common law differ so greatly, the common law of these countries must in it's natural course become different, and sometimes even contrary to the law of England. This renders the jurisdiction of the courts and the administration of justice frequently vague and precarious, dangerous, and arbitrary.—It leaves too much in the power of the judge.

Mr. Smith, in his History of New-York, has the following pertinent observation :

Smith's observations on the state of the laws, &c.

“ The state of our laws opens a door to
 “ much controversy.—The uncertainty,
 “ with respect to them, renders property
 “ precarious, and greatly exposes us to
 “ the arbitrary decision of bad judges.—
 “ The common law of England is generally
 “ received together with such statutes as
 “ were enacted before we had a legislature
 “ of our own, but our courts exercise a so-
 “ vereign authority in determining what
 “ parts of the common and statute law ought
 “ to be extended, for it must be admitted,
 “ that the difference of circumstances ne-
 “ cessarily

“ necessarily requires us, in some cases, to
 “ reject the determinations of both. The
 “ PRACTICE of our courts is not less un-
 “ certain than the law. Two things seem
 “ absolutely necessary for public security.
 “ 1st. The passing an act for settling the
 “ extent of the English laws. 2dly. That
 “ the courts establish a rule for the regula-
 “ tion of their practice.”

From hence it evidently appears that
 something is wanting to fix the judicial
 powers determinately *.

*
 Law proceed-
 ings in the
 United States.

Throughout all the States law pro-
 ceedings are simplified as much as possible.
 Special pleadings and demurrers are very
 rare and never turn upon mere informa-
 lities. In almost every case the general
 issue is pleaded and the special matter given
 in evidence. The merits of the cause are
 not suffered to depend on the niceties of
 clerkship. No writ abates for a circum-
 stantial error. The case is set forth as
 brief as possible in the declaration. If
 the action be matter of account, the

* This has been in some measure effected by the State of
 Virginia. See the revision of the laws of the State, published by
 the judges in 1784.

account is annexed and copies of both sent with the defendant, which being done, the defendant must plead the same term, and the issue is then tried.

The practice of the courts of Westminster-Hall *never* constituted any part of the law of the Colonies. And indeed if it were otherwise it would necessarily follow that there never was one legal court in any of the Colonies. The Supreme Court at New-York, (for instance) has the power of the King's Bench, Common Pleas, and Exchequer, which according to the practice of the court at Westminster would be absurd, and indeed impossible to exist in the same court.

See a pamphlet entitled, "The conduct of C. Colden, Esq. Lieut. Gov. of New-York, in 1767," relating to the judges commissions & appeals to the King, &c. &c.

The laws respecting British debts in the State of Virginia, (the richest and most commercial state in the union,) will give a good general idea of those made with similar views in other States, first premising a few general observations.

Laws, in Virginia, &c.

Property is best secured and more easily attainable in the State of New-York * than in

General observations as to the recovery of British debts.

* This is meant of debts contracted "Since the peace." For this State appears to have been particularly vindictive against the

in any other, and the practice of the courts here and in New-Jersey bears the nearest resemblance to that of Westminster-Hall.

Georgia, South
and North-Carolina.

In Georgia, South and North-Carolina* British debts are recovered with infinite difficulty, such actions being discountenanced by the bench, and where not denied by the laws are the same in effect by the delays and

County courts
in Virginia,

the claims of creditors " *Prior to and during the continuance of the war.*" The act passed here, 12th July, 1782, entitled, " An act relative to debts due to persons within the enemies lines." not only releases the debtor from all arrears of interest for ten years, but exposes the creditor to the loss of his capital by casting him on the judgment of the most prejudiced and partial auditory, and compelling them to the receipt of paper money at twenty shillings in the pound, though at the real value of not more (perhaps) than one. This State was also particularly hostile to the Loyalists.

* The Treaty of Peace expressly stipulated, That there should be no lawful impediment to the recovery of debts on either side. NEVERTHELESS, in Georgia an alien friend cannot maintain an action for debt.—And in South-Carolina the assembly passed an act, 16th March, 1784, for preventing the commencement of suits for debts contracted by any citizen previous to February, 1782; and for postponing ultimate payment by several liquidations, till February, 1789.

North-Carolina passed an act in May, 1783, to prevent the recovery of debts theretofore contracted, till after the expiration of a year.

Virginia passed an act, suspending the issuing of executions for four months, from December, 1783, to the end of the subsequent assembly;—and the Legislatures of all the other States have more or less concurred in similar measures.

other-

other impediments thrown in the way of them. Where the demand is prior to the Treaty of Peace the judges assume a *discretionary power* and the first generally falls to the ground, while *later claims* are so much impeded and procrastinated, that they are seldom recovered till the end of two or three years and then the debtor easily finds a way of making over his effects and going into goal for a few days, from whence he is altogether liberated and exonerated.

See the acts of assembly in the different States, entitled, "The insolvent act," or, The act respecting debtors and creditors.

In Maryland * the creditor is fettered with an instalment bill. In Virginia, Delaware, Pennsylvania, and New-Jersey,

C the

Maryland,
Virginia,
Delaware,
Pennsylvania,
New-Jersey:

* The Maryland instalment bill passed in 1787, directs the mode of payment as follows: That all debts contracted before the 1st day of Sept. 1786, shall be installed, except those debts comprehended in the Treaty of Peace between the United States and his Britanic Majesty.

That the proposed instalments shall not exceed the term of five years.

That no instalment be made of any debt under 20l. current money; but the court may grant a stay of execution for any sum less than 20l. not exceeding twelve months.

All sums above 20l. and under 80l. to be installed for two years.

Other States.

the means of liberation are equally easy to the debtor; and though in the more Northern States debts are better secured, and there is somewhat less opening for fraud and evasion, yet even there, if the man who goes to law for a British debt has the good-luck to get over the frowns of the bench, and the unpopularity which is sure to be stamped upon his character, he may be

All sums above 160l. and under 500l. for four years.

All sums above 80l. and under 160l. for three years.

All sums above 500l. for five years.

The interest of the whole debt to be paid at each instalment.

The debtor shall within three months give notice to his creditor, or his agent, that he intends to install his debt, and appoint a time and place for that purpose.

That the debtor shall, on instalment, give good and sufficient security for the debt, and on the creditor's refusing the security, the sufficiency of such security is to be determined by two magistrates where the debtor resides.

That the creditor, on a bond given by the debtor for the payment under instalment, may file the same with the clerk of the county and on non-payment, the plaintiff on filing an affidavit, may issue execution for the instalment due and interest; and if on return of such execution, the debtor can prove payment, the creditor to pay all costs of such execution.

That there shall lie no appeal or writ of error to remove a debt installed agreeable to this act, nor any superfedas allowed.

considered

considered fortunate in recovering his property at the end of three years.

By the late Constitution, all debts contracted and engagements entered into before the adoption thereof, are declared to be valid against the United States as under the articles of Confederation.

In Virginia no alien can hold lands, nor alien enemy maintain an action for money or other personalty. The lands of aliens are forfeitures to the State, and to an action brought by an alien, defendant may plead "That he is an alien enemy," which extinguishes his right in the hands of the debtor. Aliens in Virginia.

By an act passed in Pennsylvania * the 11th of February, 1789, aliens are there enabled to purchase and hold real estates. Pennsylvania.

Every privilege and protection which belongs to American citizens, as alien friends in Britain, equally appertains to British subjects, as alien friends within the United Observations.

* Such is the evident good policy of this law that it is probable the other States will soon follow the example.

States, with respect to the security both of person and property, because the laws of both countries are substantially the same. But nevertheless the judges in Georgia have, since the peace, determined, in the case of one Perkin's, that a British merchant and alien friend, could not maintain an action against a citizen of that State*.

Aliens in
South-Carolina.

Aliens in South-Carolina are allowed to sue the citizens thereof, and are entitled to a jury De Mediatate Linguae in suits against them, and even transient courts have been allowed them.

In other States,
&c.

The law is the same in other States, but is too frequently evaded to the injury of the British creditor.

Acts passed in
Virginia af-
fecting British
property, &c.

Several acts were passed in the State during the war to sequester British lands, slaves, &c. in the hands of the commissioners, with directions for the payment of the proceeds into the treasury. The money so paid was declared the property of the

* As to the privileges and disabilities which the Americans derive as aliens from the operation of the laws of England. See Chalmers's opinions, &c.

British subject, and if used by the State was to be repaid.

Depreciation began at this time, and large sums of money were paid in by debtors. Depreciation, &c. &c.
The assembly afterwards ordered all British property to be sold, and the proceeds of the sale to be converted into their then worth in tobacco, subject to the future direction of the legislature, which has left the question of retribution extremely problematical. In 1780, another act took away this permission to pay into the public treasury debts due to British subjects.

If a controversy arises between two foreigners, of a nation in alliance with the United States, it is decided by the consul of that nation, unless both parties chuse to refer it to the ordinary courts of justice. If one of the parties only be a foreigner it is triable before the courts of justice of the country. If it has been instituted in a county court, such foreigner may remove it into the general court or court of chancery, which must determine it in preference to any other cause before them. Foreigners in Virginia.

In cases of life and death foreigners have a right to the *Medietas Linguae*. Medietas Linguae.

A foreigner

Naturalization.

A foreigner of any nation, not in open war with them, becomes naturalized by a residence in the State and taking an oath of fidelity, and thereupon acquires almost every right of a native citizen.

**Public accounts
in Virginia.**

Public accounts are settled by a board of auditors appointed by the general assembly from whose determination an appeal lies to the general court.

**Bills of ex-
change.**

Bills protested carry in Virginia 10 per cent. interest from their date, and in some States 15 *.

**Justices,
inferior courts,
process, &c. in
Virginia.**

Every State is divided into counties, in every county justices of the peace are appointed, nominated by their fellows, but commissioned by the governor; and in some States they are paid, as in Maryland,

* The Chamber of Commerce in New-York have adopted the following regulations with respect to Bills of Exchange.

A bill on any West-India Island, Newfoundland, or other foreign possession in America, protested for non-payment shall be discharged with 10 per cent. damages, at the current exchange when presented to the drawer or indorser. Bills on Europe presented for non-payment shall be discharged with 20 per cent. at the current exchange, and all bills drawn in sterling money by procurators in Europe, on procurators in New-York, shall be paid at the exchange current when the bill is due.

in

in others not. They fit in the inferior courts (which resemble our sessions) and have jurisdiction both civil and criminal. If the question be of fact, or of fact and law, it is referred to a jury who are competent to decide on both, though they generally (when a point of law arises) refer it to the judges of the superior courts. The judges execute their process by the sheriff, the coroner, or the constable. Writs are issued by the clerks of the several courts returnable from court to court, and are by him signed and directed to one or other of the officers above-mentioned, but usually to the sheriff.

The trial of all crimes (except in cases of Crimes, &c. impeachment) is by jury, and such trial held in the State where the crime is committed, but when not committed in any State, where the Congress directs.

If a person commits a crime under the degree of felony, he is bound over by a magistrate to answer it on indictment, and sometimes on information at the ensuing court.—A court of justice (entitled a court of Enquiry) is then called which tries the prisoner by an act of assembly, at any time not less than five days, nor more than

Trials of criminals in Virginia.

than ten. If they judge him not guilty he is of course acquitted, if guilty they commit him to the goal of the general court, before which he is to be tried, first by a grand jury of twenty-four (of whom thirteen must concur in opinion) and if they find him guilty, he is then tried by a jury of twelve men of the vicinage where the offence was supposed to have been committed, and by their verdict (which must be unanimous) he is acquitted or condemned without appeal.

Pardon.

The governor has the power of pardoning all offences, but high treason, which can only be done by the house of assembly.

Criminal law.

The criminal as well as civil laws throughout the United States are very similar to those in England, but tempered with a greater share both of humanity, justice, and wisdom. *It cannot be expected that a particular account of them should be given in this work; the reader is therefore unavoidably referred to their respective codes *.*

Justice.

Justices of the peace have jurisdiction in all civil matters, except such as relate to the court of Admiralty.

* See Dr. Franklin's letter on the subject of criminal laws, 1786.

The county court must consist at least of four justices who assemble at the courthouse of the county on a fixed day in every month, and an appeal lies from their determination to the superior courts if the plaintiff's demand be to the amount of *ten pounds* sterling, or affects the title or boundaries of lands.

County court
in Virginia.

There are four superior courts.—The general court, the court of chancery, the court of admiralty and appeals. The two first retain appeals from the county courts, and have also original jurisdiction (where the object pursued is of the value of *twenty pounds* sterling, or where the claim affects the title or boundaries of lands) the admiralty jurisdiction is altogether original.

Superior courts
in Virginia.

The general court (the first in business and consequence in the State, and very analogous in its formation to that of all other superior courts in the United States,) has five judges, the chancery three, and the court of admiralty three.

General court,
judges, &c.

The court of appeal is composed of the judges of the superior courts who sit twice in the year, receive appeals in all civil cases from each of the superior courts, and is

Court of ap-
peal in Virgi-
nia.

D

like

like the judicature of the Lords in England, final; but this court has no original jurisdiction.

Chancery and
general court.

The Chancery and general courts sit twice in the year, and the latter twice for business, civil and criminal, and twice for criminal business only.

Debtors in
Virginia.

Debtors unable to pay their debts, and making faithful delivery of their whole effects, having remained twenty days in prison in the common gaol, are liberated, and their persons for ever discharged of restraint for such previous debts; but all after acquired property is subject to the power of the creditor, and the laws in all the States are favourable to the debtor and injurious to the creditor. Their respective acts of insolvency afford the debtor an asylum, and they are often discharged on a short newspaper notice, without a possibility of distant creditors being heard in support of their demands.

In other States,

Paupers.

The poor are supported by an assessment on the tithable property of the parish; to such as are in part only able to support themselves, supplementary aids are given.

Marriages

Marriages must be solemnized either Marriages.
 on special licence granted by a magis-
 trate of the county, as a proof of the
 consent of the parent or guardian, if either
 party be under age, or after solemn pub-
 lication on three several Sundays at some
 place of religious worship in the parishes
 where the parties reside. The act of so-
 lemnization may be by the minister of any
 society of Christians who shall have been
 previously licenced for this purpose by the
 court of the county. Among Quakers
 marriages are solemnized by their own
 societies.

Conveyances of land must be registered Conveyances,
&c. in Vir-
ginia.
 in the court of the county wherein they lie,
 or in the general court, else they are void ;
 as to creditors and subsequent purchasers,
 and in such conveyances there must be no
 interlineations, and the subscribing witnesses
 must attend at the time of registering.

Slaves pass by descent as lands do ; Slaves, &c. in
Virginia.
 where the descent is from a parent, the heir
 is bound to pay an equal share of their
 value in money to each of his brothers
 and sisters. Slaves and lands were both Estate tail, &c.
 formerly entailable, but by the law of
 this State, (and I believe by that of most,

Fines and recoveries.

if not all the other States) what our books construe an estate tail, is considered as an absolute estate in fee simple. The same act has removed a thousand legal difficulties, and done away many of the sober fictions of the common law. They have neither fines nor recoveries, and real actions are not in use. Title to lands are tried by ejectment, trespass, or replevin.

Treason.

Treason in the United States consists only in levying war against them, or adhering to their enemies, and giving them aid and comfort, and no one can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Attainder, &c.

The Congress may declare the punishment of treason, but no attainder of treason works, corruption of blood, or forfeiture, except during the life of the person attainted.

Public acts, records, &c.

Full faith is given to all public acts, records, and judicial proceedings of every State. Congress prescribing the manner in which such acts, records, and proceedings are to be proved, and the effect thereof.

The

The citizens of each State are entitled Citizens.
to all the privileges and immunities of citizens in the several States.

A person charged in any State with treason, Fugitives for crimes.
felony, or other crime, flying from justice and found in another State, on demand of the executive authority of the State from which he fled, is delivered up to be removed to the State, having jurisdiction of the crime.

Persons held to service or labour in one State, under the laws thereof, escaping into another is also on demand delivered up to the person to whom such labour or service is due. Fugitives for debt.

This extends to all cases of debt; and prior to the late constitution the custom was to transmit an exemplification of the proceedings against the debtor to the State where he had fled, upon which process was issued against him in the same manner as if he had remained and abided the issue of the plaintiffs demand in the first instance.

Gaming debts are void in Virginia, and money paid in discharge of them above Gaming debts in Virginia.
forty shillings, may be recovered back at
any

any time within three months, in an action for money had and received.

Antient method of locating lands in Virginia.

Formerly when an individual wished to obtain a portion of unappropriated lands he was to locate and survey it by a public officer appointed for the purpose. Its breadth was to bear an equal proportion to its length. The grant was to be executed by the governor, and the lands were to be improved in a certain manner within a given time. From these regulations there resulted to the State a sole and exclusive power of taking conveyances of the Indian right of soil. The State, or Crown members, made general purchases of the Indians from time to time, and the governor parcelled them out by special grants.

Grants unaccompanied with their proper legal solemnities were regularly set aside by *Scire facias*, or bill in chancery.

Method in New-York.

In New-York the custom was to apply to the governor in council for a licence to purchase lands of the natives in his Majesty's name. A deed was then privately obtained from the Indian proprietors to the King, and annexed to a second petition to the governor for a warrant to the surveyor-general,

general, to make a survey of the quantity purchased. Another warrant, upon the return of this survey, was then issued to the attorney-general to prepare a draught of the patent, which being transmitted to the secretary's office, was then engrossed on parchment and the great seal affixed to it by the governor *.

The mode is now nearly the same as before the revolution. An individual wishing to appropriate lands, pays to the public treasurer a proportionate sum, and then carries the treasurer's receipt to the auditors of public accounts, who thereupon debits the treasurer with the sum, and orders the register of the land-office to give the party a warrant for his land; with this warrant from the register he goes to the surveyor of the county where the land

The present mode in Virginia.

* In these surveys and deeds more lands were often included than the Indians intended to sell, and these frauds being frequently complained of, an order was made by the governor in council, in 1736, that thenceforth no Indian deed should be taken, until the land proposed to be granted was actually surveyed by the surveyor-general, or one of his deputies, in the presence of the Indian proprietors. That the bounds of the tract should be then entered in the deed, and a certificate endorsed that they are agreeable to the survey, and that he saw the consideration money or goods, *bona fide* delivered to the vendors. — Smith's New-York.

lies, has it laid off by the surveyor, who gives him its exact description in the form of a certificate, which certificate he returns to the land officer when the grant is immediately made out and signed by the governor. This vests in him an absolute estate in fee simple.

In other States. The mode above-mentioned is very nearly the same in the other States.

Benefit of clergy. The benefit of clergy is abolished.

New trial. Where verdict is against defendant the court may at their discretion grant or deny a new trial.

Usury. The laws against usury are in force in Virginia and New-York, and perhaps in all the States, but it is certain they are not in practice in many of them.

Naturalization bankruptcies. The late constitution empowers Congress to establish a uniform rule of naturalization and laws on the subject of bankruptcies throughout the United States. At present they differ in almost every State. In some few of the States *only* the bankrupt laws are in force. They are not I believe in force
Southward

Southward of Maryland, or Northward of New-York.

Many of the laws which were in force during the monarchy being merely applicable to the superintendant government of Great-Britain, and inculcating principles inconsistent with republicanism, it is said to be in contemplation of Congress to form one general code or body of laws, making the common law of England the basis of the work, but whether they will reduce it to a text or leave it to be collected from the usual monuments of it, or which would be best, is matter both of doubt and difficulty *.

* See Jefferson's notes on Virginia and the laws of the States in general.

C H A P. II.

Of the Jurisdiction of the Courts of Westminster-Hall, over those of the British Islands and Provinces, and of the State and Jurisdiction of the United-States.

* Burr. Rep.
856. King, v.
Cowle.

THE Court of King's-Bench can send a writ of *Habeas Corpus* to the plantations.

But notwithstanding this power, where they cannot judge of the cause or give relief upon it, they would not interpose. Therefore on imprisonment in the plantations, Lord Mansfield said, he had known complaints to the King in council, and orders to bail or discharge, but he did not remember any application for a writ of *Habeas Corpus*, yet cases have formerly happened of persons illegally sent from hence, and detained there, when a writ of *Habeas Corpus* out of the Kings'-Bench in England would be the most proper and effectual remedy.

Upon

Upon a proper case, writs of *Mandamus* Id. 855. 6. 7.
Prohibition, *Habeas Corpus*, and *Certiorari*, Com. Rep. 20;
 may issue to every part of the dominions 29. Calvin's
 of the Crown of England. There is no Case. Vaugh
 doubt as to the *power* of the court, the only R. 290 401.

The respective acts of Assembly for esta- K. B. & C. B.
 blishing courts of King's-Bench and Com- in St. Christo.
 mon-Pleas, in the Islands of St. Christopher phers & Nevis.
 and Nevis, reserve the jurisdiction of the
 court of King's-Bench in England.

Lord Mansfield said, in the case of *Moftyn and*
Moftyn and Fabrigas, " Wherever there is *Fabrigas*.
 " a question between two British Provinces
 " in America, it must be tried in England."

The judges of the courts in England Id. Show.
 determine all cases that arise in the planta- Parl. C. 30.
 tions, &c. and they must inform themselves 33. 1 Atkyns
 by having the law stated to them. Yet there 543. 4.
 may be some cases abroad which may not 3. ——— 589.
 be fit to be tried here. 1. Blackst. c.
 107. 8.

See further upon this subject, the trial of Further autho-
Moftyn and Fabrigas throughout. Salk. ritics;
 Rep. 411. 666. 4. Mod. R. 222. 2. P.
 Williams, 75. 6. Vaughan R. 290. 402.
 2 Lord Raymond, 1447. 8. Spirit of Laws
 E 2 B. 21.

B. 21. Ch. 17.—In Showers's Parl. Cases 30. 31. in the case of Dutton and Howel, it is said, " Though a matter may
 " justify a governor for an act done in his
 " government, which would not justify him
 " for the same act done in England, yet
 " the governor must shew that he has
 " pursued the rules of law in that place,
 " or in case of no positive laws, the rules
 " of natural justice; for either the com-
 " mon law, or new instituted laws, or na-
 " tural equity, must be the rule in those
 " places."

Lord C. I. De
 Grey in Moslyn
 and Fabrigas,
 60.

If any country in which torture and banishment are the law, should come into the possession of Great-Britain, these punishments fall of course.

Courts in the
 United-States.

In the United-States the style of the courts of justice and the extent of their jurisdiction differ considerably. In some of the States they have what is called the *General Court*, invested with powers equal to those of the court of King's-Bench in England. In others they have courts styled the Superior Court and court of Common-Pleas, (exercising both civil and criminal jurisdiction.) And there are some Colonies in the West-Indies in which pleas of the crown

crown are cognizable by a grand sessions, and civil matters by a distinct court, called the Common-Pleas. In some of the United-States, (as in the Carolinas, Virginia, Maryland, Connecticut, and New-Hampshire,) they have courts in each county which decide questions of property to a large amount, but with an appeal to the Superior Court which decides matters in the first instance (usually where the demand is not less than *one hundred pounds*,) that exceed the jurisdiction of the county courts. In others, (as in Pennsylvania, New-York, New-Jersey, and Massachusetts,) the judges of the superior courts take their respective circuits through the States twice a year. In some of the States there are courts of chancery, (as in the Carolinas, Virginia, Chancery, New-Jersey, and New-York,) in others not, but the judges are invested with powers of equitizing, similar to those of a chancellor. From the decisions of the chancery the usual appeal is to the governor and council.

From the decisions of the court of chancery (in the British Provinces and the West-Indies,) an appeal lies to the King in council in England, to whom the proceedings must be transmitted, and the party appealing

Appeal,

ing

* Ld. Raym.
1447.

ing must proceed within a year after the appeal is allowed.

But a cause cannot be transmitted from difficulty, but must be determined one way or other.

Vaugh. R.
290. 402.
Show. Parl.
cases. 33.

A writ of error lies to reverse a judgment in any of the dominions belonging to England.

Nova-Scotia,
New-Brunswick,
and Canada.

Canada,
constitution;

The common law is established in the provinces of Nova-Scotia, and New-Brunswick, and by the 14th Geo. 3. c. 38. the criminal law of England, in Canada also, The constitution of this province is founded on the statute of the 14th Geo. 3. called the Quebec Bill. By that bill the legislature is vested in the governor and legislative council. The council is composed of the lieutenant-governor, chief-justice, and secretary for the time being, and *twenty* other members. They are appointed by the crown and receive each a salary of *one hundred pounds* per annum. They consist of near one half French members. Their power extends to all the necessary purposes of government except the levying taxes which the statute inhibits,

The

The laws * declared to be in force by Laws.
the Quebec Bill for the determination of
civil rights, are those which were in force
under the French government before the
conquest. They are oppressive and are
altogether incompetent to the protection of
their civil and commercial rights.

The real property of the province is held Tenure of real
property.
under the feudal tenures which existed when
it was under French dominion and by these
tenures the inhabitants are held in a state of
vassalage.

The form of government in Nova-Scotia New-Brun-
swick.
is copied from that of England.—The
governor (who is appointed in England,) re-
presents the sovereign, whose assent is ne-
cessary to constitute a law. He nominates
a council analogous to our House of Lords,

* It is expected the common law of England will shortly be
introduced in Canada, the same as in other provinces, in lieu of
that vague, indeterminate, capricious, tyrannical, and execrable
system of jurisdiction that at present prevails there.—No man
at present knows what the law is in Canada. The practitioners
indiscriminately cite an English statute, the civil, canon, and
common law, and even the Frederician code as authorities of
equal weight.

The constitution has been also greatly complained of, and
several petitions have been presented for the Repeal of the
Quebec Bill, and for a liberal constitution similar to those of
the other Colonies.

and

and representatives of the people are chosen from the freeholders and burgesses of the counties, like the Commons of England.

New-Brunswick.

The governor's power formerly extended not only over the Peninsula, but also to the island of Cape-Breton, and to that tract of country which reaches from the Bay of Fundy to the South shore of the river St. Laurence. Great-Britain wisely considering the inconvenience resulting from the distance of the courts of law and houses of legislation, has since divided this province into two distinct governments, and given to the latter (now denominated New-Brunswick,) the same constitution and laws.

Practice of the courts.

The mode of practice in the courts of both these Provinces are as near as possible similar to those of Westminster-Hall.

Judicial power vested in one supreme court, and inferior sets appointed by Congress.

By the late constitution the judicial power of the United-States is vested in one Supreme Court, and in such inferior courts as Congress shall establish, the judges thereof holding their offices during good behaviour, &c.

Extent of jurisdiction.

The judicial power extends to all cases in law or equity arising under the constitution,

tion, the laws of the United-States; and treaties made under their authority. To all cases affecting ambassadors or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United-States shall be a party; to controversies between two or more States, between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under the grants of different States; and between a State or the citizens thereof, and foreign States, citizens or subjects.

Treaties.

Ambassadors,
&c.

Admiralty.

State contro-
versies, &c.

In cases affecting ambassadors and other public ministers and consuls, and those in which a State are party, the supreme court has *original* jurisdiction. In all cases before-mentioned, the supreme court has *ap-
pellate* jurisdiction both as to law and fact.

Consuls and
other public
ministers.Where original
jurisdiction,
and where ap-
pellate.

The trial of all crimes, except in cases of impeachment, are by jury, and such trial must be in the State where the crime is committed, except in cases of impeachment, and when not committed in any State, where Congress directs.

Trial by jury,
&c. of all
crimes except
impeachments.

United-States.

The common law of England seems to have been adopted by general consent throughout the United-States, under the modification of the municipal laws distinct and peculiar to each, except where a difference of condition and local circumstances have made them improper, unnecessary, or inapplicable.

The adoption of the *statute law* is generally throughout the States extended to the reign of King James, and all acts previous to that period—but *not to subsequent statutes*, unless particularly named or recognized by the legislature of the country, whose acts and ordinances during the monarchy are digested into codes, which, with the municipal law, forms the present system of jurisprudence throughout the United-States *.

* See a pamphlet entitled, "The conduct of C. Colden, Esq. lieutenant-governor of New-York, 1767, relating to judges' commissions, appeals to the King, &c.

C H A P. III.

Of the Commercial Regulations in the United-States. Those to which the United-States were subjected before the Revolution, with such Alterations as have since taken place.

IT is a fundamental law of Europe, that all commerce with a foreign Colony shall be regarded as a mere monopoly, punishable by the laws of the country; and in this case we are not to be directed by the laws and precedents of the antients which are not applicable*.

F 2

It

* The antients, very much restricted the trade of their colonies. We are in a great measure ignorant of their civil constitution, commerce, and laws; enough however remains to prove, that their assumed jurisdiction over them was very great.—The most authentic documents on this subject are the treaties between the Romans and Carthaginians, which breathe the true spirit of modern commerce.—See Polybius Lib. 3. ch. 22.

It is thus translated by CASAUBON.—“ Amicitia Romanis
 “ & Romanorum sociis, cum populo Carthaginiensi, Tyriis
 “ et

Sp. Laws.
b. 21. ch. 17.

It does not include a permission to trade in the Colonies, for these always continue in a state of prohibition*.

The

“ et Uticensibus eorumque focis, his legibus esto: Romani
 “ ultra Vulchrum promontorium, massiam, & Iarfeium prædas
 “ ne faciunto; ad mercaturam ne eunto, urbem nullam con-
 “ dunto. Si in Latio urbem aliquam Carthaginienfes ceperint,
 “ quæ subditiõne Romanorum non erit, pecuniam et Captivos
 “ ipsi habento; urbem reddunto. Si qui Carthaginienfium
 “ aliquos ceperint quiscumque fædere scripto juncti sint
 “ Romani; qui tamen sub Romanorum Imperio non erunt:
 “ hos in populi Romani portus ne deducunto; si quis erit
 “ deductus, et manum Romanus iniecerit, liber esto. Eodem
 “ jure et Romani tenentor. Si Romanus ex aliqua regione
 “ quæ sub imperio Carthaginienfium erit, æquam commeatufve
 “ fumpferit; cum his commeatibus ne cui eorum noesto qui-
 “ buscum pax et amicitia est Carthaginienfibus * * * facito,
 “ Si qua injuria aliqui facta erit, priyato nomine ejus persecutio
 “ ne cuiquam esto; sed ubi tale quid admiserit aliquis, publicum
 “ id crimen esto. In Sardinia et Africa neque negotiator
 “ quisquam Romanorum, neque urbem condito; neve eo
 “ appellito, nisi commeatu accipiendi gratia, vel naveis refici,
 “ enq, si tempestas detulerit, intra dies quinque excedito. In
 “ Sicilia, ubi Carthaginienfes impærauerint, item Carthagine
 “ omnia Romanus facito, vendito, quæ civi licebit. Idem
 “ Romæ Carthaginienfi jus esto.”

This treaty is in some places imperfect, Polybius supplies in the following tenor what refers to the allies of Rome.

Similiter Romani cavent ne fiat injuria Ardeatibus, Antiatis, Circeiensibus, Jarracinenfibus; hæc autem sunt oppida Latii maritima, quæ legibus hujus foederis volunt esse comprehensa.

* The connection between the various colonies of the American empire of Britain arose from their being territories of the

The disadvantage of a colony that looses the liberty of commerce is compensated by the mother country.

When a foreign commerce with a Colony is prohibited, it is not lawful to trade in its seas. Nations (who are with respect to the universe what individuals are in a State,) like these are governed by the law of nature, and by particular laws of their own making. One nation may assign to another the sea as well as the land.

Selden, in his *Mare Clausum*, has proved

the same State. When the independence of the United-States was recognized they became foreign countries *with regard to the remaining plantations of Great-Britain*;—and the citizens of the one, and the planters of the other, who had once been fellow subjects of the same community, became aliens *with respect to each other*. The acts of Parliament which prohibited all future commerce between regions that had once been bound in the same compact, only enforced the *original system* which the law of nations had *always* enjoined.—See Chalmers's opinion, page 43.

It requires only a short recapitulation to trace up the rise of that system to its true source. The policy of Spain, says Lord Bacon, was to keep the trade of the Indies under such lock and key as both confederates and subjects were excluded commerce with these countries. Portugal caught the same jealous spirit; and France and England followed their example,—and hence the maxim laid down by Montesquieu!

that

Vaugh's,
Rep. 188.

that the sea is capable of occupancy and dominion naturally as well as the land.

Observations
upon the Ame-
rican claim to
a free-trade.

If these principles are admitted, it becomes a question of curious and interesting enquiry, how the American government support their claim to a *free-trade* ?

They must derive their right either from the law of nature or nations. If, from the first every foreign nation, (says Vattel,) *may* decline the commerce they disapprove, without assigning even a motive—which confines them to such only as are *willing* to trade with them. If, from the latter, it is answered,—That by the common consent of all European powers, it is a principle very early established, that the traffic of every Plantation or Colony belongs to that State which originally formed it. The law of nations has uniformly prohibited the intercourse of one foreign country with the Colonies of others.

Statutes, Orders of Council, &c. Relative to American Commerce.

12 Car. 2. c. 18.

BY 12 Car. 2. c. 18. no sugars, tobacco, cotton, wool, indicoes, ginger, fustick, or other dying wood, of the growth and produce

produce of the English plantation, shall be exported from thence, to any other place, than England; on forfeiture thereof.

Ships of England sailing to any English plantation shall be bound with sureties to bring goods there loaded into England, Ireland, Wales, or Berwick. *Ibid.*

By 15 Car. 2. c. 7. no commodities ^{15 Car. 2. c. 7.} of the growth and manufacture of Europe shall be imported into any British plantation unless shipped in England, and in English built shipping, with the master and three-fourths of the mariners English *.

* See Blackstone's Comment. 418. c. 21. Geo. 3. c. 11. Scobel. 132. 176. Mod. Univ. hist. 41. 289. The most beneficial act for the trade of England is the Navigation act, the rudiments of which were first produced in 1650. This prohibited all ships of foreign nations from trading with any English plantations without licence from the council of state. In 1651, the prohibition was extended also to the mother country, and no goods were suffered to be imported into England or any of its dependencies, in any other than English bottoms; or in the ships of the European nation of which the merchandize imported was the genuine growth and manufacture. At the Restoration the former provision in 5 Eliz. c. 5. f. 8. were continued by 12 Car. 2. c. 18. that the master and three-fourths of the mariners shall also be English subjects.

See observations in the Letters of the Pennsylvanian Farmer, &c. P. 13. 14. 18. 51.

Ships navigated as this act requires, may lade in any part of Europe, salt for the fisheries of Newfoundland, wines in the Madeiras and Azores of the growth thereof, servants or horses in Scotland and Ireland, all sorts of victual of the growth or produce thereof, and transport the same to any of the plantations. *Ibid.*

Inventory, &c.

Every person importing goods to any of the plantations, shall deliver the governor of such place, within twenty-four hours an inventory, and not lade or unlade until delivery thereof, on forfeiture of ship and goods; and governors shall take an oath to observe this act, and if they offend against it they are to be disabled, and also forfeit *one thousand pounds.* *Ibid.*

Duty of Officers, &c.

Officers of the customs suffering such goods from the plantations, to be carried into any other country, before unladen in England shall be disabled, and forfeit the value of the goods. *Ibid.*

Sea-coals.

Sea-coals may be shipped to any of the plantations, from any port of England, according to this act, paying the duties. *Ibid.*

By

By 22 & 23 Car. 2. c. 26. plantation ^{22 & 23 Car. 2, c. 26.} goods shall be bought and unladen at some port in England, and the word Ireland shall be omitted in the bonds to be taken for that purpose.

Governors of the plantations shall return ^{Duty of governors, &c.} yearly to the custom-house, a list of all the ships loading therein, and any ship unloading sugars, tobacco, cotton, wool, indicoes, ginger, fustic or other dying wood, except in England, such ship and lading shall be forfeited. *Ibid.*

By 25 Car. 2. c. 7. all vessels taking ^{25 Car. 2. c. 7.} goods on board in the plantations not giving bond to unload the same in England, for the rates of customs there, shall pay for sugar, white *five shillings* the hundred, brown sugar *one-shilling* and *six-pence*, tobacco *one-penny* per pound, cotton wool *one halfpenny*, indico *two-pence*, ginger the hundred *one shilling*, for logwood *five pounds*, and for fustick or other dying wood *six-pence*, and for every pound of cocoa nuts *one-penny*.

By 7 & 8 Will. 3. c. 22. goods shall not ^{7 & 8 W. 3. c. 22.} be

G

be imported or exported to or from the plantations but in ships built in England, Ireland, or in the plantations, except prize ships, and foreign ships employed for three years to bring in naval stores, on forfeiture of ship and goods.

Governors
oath.

Governors of English plantations shall take an oath to observe all acts relating to the plantations, and on neglect shall be removed from their government and forfeit one thousand pounds. *Ibid.*

Naval officers.

Naval officers in the plantations shall give security to the commissioners of the customs in England, for performance of their duty, and in default shall be disabled, and governors in the *interim* shall be answerable, *Ibid.*

Ships, &c.

Ships coming into or going out of the plantations are liable to the same rules, and officers of the revenue there shall have the same power as officers in England, *Ibid.*

Forfeitures.

One-third of the forfeitures, not always disposed of shall be to the king, another to the
the

the governor of the plantation, the other to the prosecutor. *Ibid.*

No goods shall be shipped, notwithstanding payment of duties, in the plantations, before security given as required, on forfeiture of ship and goods. *Ibid.* Security, &c.

All laws and usages in any of the plantations repugnant to any law made in England, are declared to be illegal and void. *Ibid.* Laws of England, &c.

Commissioners of the treasury and of the customs in England, may appoint officers of customs in any of the plantations, and on an action concerning his Majesty's duties brought there, the jury shall be natives of England, Ireland, or plantations, and the offence may be laid in any colony: *Ibid.* Power of commissioners, &c.

All places of trust in the courts of law, or relating to the treasury of the islands, shall be in the hands of the natives of England or Ireland, or of the islands. *Ibid.* Places of trust, &c.

The sureties in bonds given in the plantations Sureties.

tations as required, shall be of known residence and ability there. *Ibid.*

Landing &c. Product of the plantations shall not be put on shore in Scotland or Ireland, but in bad weather, unless the duties are paid in England; on forfeiture of ship and goods. *Ibid.*

Sales, &c. Persons shall not sell any *property* under letters patents to any other than subjects of England, and all governors nominated shall be approved of by the king, and take the oaths, *Ibid.*

Ships, &c. To prevent colouring foreign ships under English names, English built ships, prize, and foreign ships allowed, shall be registered at the custom-house. *Ibid.*

It does not extend to open boats used on rivers, and ships names changed shall be entered again. *Ibid.*

11 Will. 3. c.
12.

By 11. Will. 3. c. 12. oppression or other offence contrary to law, committed by governors or commanders in the plantations may be tried in the King's-Bench in England, or before commissioners.

By

By 3 & 4 Ann. c. 5. rice and molasses, ^{3 & 4 Ann. c. 5.} produced in the plantations, shall be under like securities, as other plantation goods.

By 6 Ann. c. 30. the rates of foreign ^{6 Ann. c. 30.} coins in the plantations may be ascertained by royal proclamation, and persons paying or receiving at a higher rate, shall be imprisoned six months and forfeit *ten pounds*.

By 1 Ann. c. 10. plantation bonds, on ^{1 Ann. c. 10.} default of prosecution, within three years, are void, and shall be delivered up.

By 10 Ann. c. 22. all prize goods taken ^{10 Ann. c. 22.} in America and imported, are liable to the plantation duties.

By 4 Geo. 1. c. 11. merchants and ^{4 Geo. 1. c. 11.} others may contract with persons of the age of *fifteen*, to serve in any of the American plantations for *eight* years, provided such person acknowledge his consent before the lord mayor of London, or justice of peace, and sign the same.

By 8 Geo. 1. c. 15. beaver skins, and ^{8 Geo. 1. c. 15.} other furs of the produce of the plantations in Asia, Africa, or America, shall be imported

ported from thence directly into Great-Britain.

⁴ Geo. 2. c. 15. By 4 Geo. 2. c. 15. all goods of the produce of the American plantations may be imported from thence into Ireland, in British ships, duly navigated, except sugars, tobacco, cotton, indico, ginger, speckle wood, or Jamaica wood, dying woods, rice, molasses, furs, copper ore, or naval stores. And by 5 Geo. 2. c. 9. hops from Flanders.

⁵ Geo. 2. c. 7. By 5 Geo. 2. c. 7. debts owing in the plantations to his Majesty, or where any person residing here shall be a party, may be proved by affidavit before a chief magistrate.

Houses, lands, and negroes in the plantations, shall be liable to satisfy all debts.
Ibid.

⁶ Geo. 2. c. 22. By 5 Geo. 2. c. 22. no hats or fells shall be exported out of any of the British plantations, on forfeiture thereof, and *five hundred pounds* on the offender or officer of customs conniving, and *forty pounds* on persons knowing thereof.

None

None shall work hats or felts in the ^{Hat-making.} plantations, but such as have served an apprenticeship for seven years, nor shall they have more than two apprentices at one time, or employ negroes in hat making, on pain of *five pounds* a month; but sons may work at their father's houses, being bound apprentice for seven years. *Ibid.*

By 6 Geo. 2. c. 13. all rum and spirits, ^{6 Geo. 2. c. 13.} made in any foreign plantations in America, on importation to the British plantations, shall pay *nine pence* per gallon. (*and three-pence per gallon for molasses and syrups*, 4 Geo. 3. c. 15.) and *five shillings* per hundred, for sugars and peneles, *amended, additional duties imposed, and made perpetual*, by 4 Geo. 3. c. 15.

To be under the management of the ^{Landing, &c.} customs and excise, and landing before entry, is a forfeiture of the goods. *Ibid.*

No sugars except the produce of his ^{Sugars, &c.} Majesty's plantations, shall be imported into Ireland, but only such as shall be shipped in Great-Britain, on forfeiture thereof; and persons assisting therein, are to forfeit treble the value. Obstructing the officers, is a penalty of *fifty pounds*, and three months imprisonment;

imprisonment; and officers conniving are to forfeit *fifty pounds*, and be disabled; and masters offending against the act, are to forfeit *one hundred pounds*, and proof lies on the claimer. *Ibid.*

Drawback.

A drawback of the duties on sugar imported from the British plantations, shall be repaid on exportation within the year. *Ibid.*

Limitation.

Prosecutions on this act must be within two years, and it does not extend to Spanish or Portugál sugars. *Ibid.*

12 Geo. 2. c. 35.

By 12 Geo. 2. c. 35. continued by 26 Geo. 3. c. 53. till September 29, 1792, his Majesty's subjects in any British ship, navigated according to law, belonging to British subjects, clearing outwards from Great-Britain, by licence from the commissioners of customs, may carry sugars from the American colonies directly to foreign parts.

Oath, &c.

Oath to be taken that the ship belongs to British subjects before licence given; and taking in foreign goods, is a forfeiture thereof. *Ibid.*

Entry.

Previous to the lading sugars at the said colonies,

colonies, entry shall be made with the proper officer, who is to deliver a cocket, and the master shall have a licence and certificate, before the vessel departs, to be delivered on her return to Great-Britain, to the commissioners or collector of the port. Oath to be taken, and entry made: and going to foreign parts, without touching at some port in Great-Britain, the licence shall be void, and liable to former penalties. *Ibid.*

Officers of customs are empowered to enter, examine, and unlade suspected ships; and in case there be no goods found on board, but what are mentioned in the manifest delivered; the officers to reload, and repair damages. *Ibid.*

Duty of Officers, &c.

Sugars brought from the plantations, with licence, may be landed in Great-Britain, on paying the duties. *Ibid.*

Sugars.

Sugars, with a licence, may be carried to the Southward of Cape Finisterre, without touching at Great-Britain. *Ibid.*

On performing the requisites, the bond to be discharged, otherwise to be forfeited. *Ibid.*

Unlading.

Ship unlading such sugars, and taking in other goods, subject to entries. *Ibid.*

Seamen's wages.

Owners of ships carrying such sugars, not to pay any seaman more than half their wages before their return home. *Ibid.*

Forfeiture.

Any person granting false certificates, altering the licence or oath, to forfeit *one hundred pounds.* *Ibid.*

13 Geo. 2. c. 4.

By 13 Geo. 2. c. 4. his Majesty may, in time of war, grant charters and commissions, to any society, for taking lands, forts, and places of strength, possessed by an enemy, in any part of America, and the same are assured to them and their heirs.

No privateer in America, to take on board any servant, without consent of the master; but in all cases to observe the laws of that country. *Ibid.*

Foreigners living seven years in any of our colonies, to be deemed natives, on taking the oaths, to be entered and certified. *Ibid.*

14 Geo. 2. c. 37.

By 14 Geo. 2. c. 37. all unlawful subscriptions, transfers, assignments of stocks,
or

or pretended stocks in the plantations, shall be liable to like fines, penalties, and punishments, as common nuisances.

By 15 Geo. 2. c. 31. masters of vessels in ^{15 Geo. 2. c. 31.} the plantation trade, registered, shall give an account upon oath, and loading or unloading goods, before proof of English owners, such vessel shall be forfeited.

Where certificate of the register of such ^{Certificate lost, &c.} vessel shall be lost, the master may make oath, and shall give security that no illegal use shall be made of the first register, if found, and may trade for one voyage after, and then shall register *de novo*. *Ibid.*

All plantation bonds shall be made with a ^{Bonds, &c.} condition to produce a certificate within eighteen months, that the goods enumerated have been landed and discharged. *Ibid.*

By 19 Geo. 2. c. 30. mariners be- ^{19 Geo. 2. c. 30.} longing to privateers, or trading ships, shall not be impressed in the West-Indies, unless they shall have deserted from his Majesty's ships, on pain of *fifty pounds*.

By 22 Geo. 2. c. 3. commissioners under ^{22 Geo. 2. c. 3.} the

the great seal may determine appeals from the courts of Admiralty in the plantations.

23 Geo. 2. c. By 23 Geo. 2. c. 20. raw filk of the growth of the British colonies in America, may be imported without paying any duty, in vessels lawfully manned, and on oath, and certificate.

24 Geo. 2. c. 51. By 24 Geo. 2. c. 51. no duties shall be paid on pot or pearl ashes imported from the British plantations.

25 Geo. 2. c. 6. By 25 Geo. 2. c. 6. the acts relating to the attestation of wills shall extend to such plantations, where 29 Car. 2. c. 3. is received.

29 Geo. 2. c. 5. By 29 Geo. 2. c. 5. foreign protestants, receiving the King's commission to be officers, engineers, or the like, in regiments in America, taking the oaths, and producing certificates thereof, are enabled to serve in America only.

4 Geo. 3. c. 15. The 4 Geo. 3. c. 15. imposed duties on sugar, indico, coffee, pimento, wines, wrought filk, callicoes, cambricks, and lawns, imported into the plantations, viz. on foreign white, or clayed sugars, *one pound,*

pound, two shillings per hundred ; indico, six-pence per pound ; coffee, two pound nineteen and nine pence per hundred ; Maderia wines, seven pound per ton ; Portugal and Spanish wines, ten shillings per ton ; wrought filk, bengals, and mixt with herba, two shillings ; callicoes, two shillings and six-pence per piece ; cambrick, three shillings per piece ; French lawns, three shillings per piece ; coffee, seven shillings per hundred ; pimento, one halfpenny per pound.

By 5 Geo. 3. c. 39. spirits shipped in 5 Geo. 3. c. 39. America, shall not be landed in the Isle of Man.

The coast of Africa, from Saltee to Cape Rouge, was vested in the crown, and the trade laid open to all subjects, c. 44. Coast of Africa, &c.

British American iron and lumber, may iron & lumber. be imported to Ireland, and lumber to the Madeiras and Azores, or any part of Europe, south of Cape Finisterre, upon giving bond, and 23 Geo. 2. c. 29. *repealed*, c. 45.

Ships from British American plantations Bond, &c. to give bond, as to molasses and syrups, whether

whether the goods were laden there or not.
Ibid.

Boats, &c. Boats under twenty tons, may carry goods the produce of America, and not liable to duties, from one colony to another, without a cocket. *Ibid.*

Fees. The fees of officers of the customs in America, were by the same act ascertained and regulated.

7 Geo. 3. c. 30. By 7 Geo. 3. c. 30. and 21 Geo. 3. c. 30. till December 1796, fago powder and vermicelli may be imported, duty free, from the colonies in America.

8 Geo. 3. c. 22. The 8 Geo. 3. c. 22. instituted the court of vice admiralty in America, for the recovery of penalties and forfeitures as to trade or revenues there.

9 Geo. 3. c. 38. By 9 Geo. 3. c. 38. the following premiums were given on importing raw filk from America, viz: from January 1, 1770, to the same time in 1777, *twenty-five pounds* per cent. to January 1, 1784, *twenty pounds* per cent. and to January 1, 1791, *fifteen pounds* per cent.

By

By 11 Geo. 3. c. 51. importers of rum ^{11. Geo. 3. c. 51.} and spirits from the plantations, may warehouse the same.

By 13 Geo. 3. c. 14. foreigners may lend ^{13. Geo. 3. c. 14.} money on estates in the colonies, at *five pound* per cent. per ann.

Cocoa and coffee the produce of ^{Cocoa & Coffee.} Dominica, may be imported under the same regulations as sugar and rum from thence, and one seventh part allowed on the coffee in the husk. 13 Geo. 3. c. 73. 17 Geo. 3. c. 44.

Duty on negroes imported to Dominica, ^{Negroes.} and exported from Jamaica, reduced from *thirty shillings* to *two shillings* and *six-pence* per head. 13 Geo. 3. c. 73.

Certificates and notes accepted by the ^{Tenders, &c.} creditors of the public in America, as securities, to be legal tenders for debts due to the public treasurers there. 13 Geo. 3. c. 57.

By 18 Geo. 3. c. 12. the exercise of tax- ^{18. Geo. 3. c. 12.} ation over the British colonies in North-America and the West-Indies, except for the

the regulation of commerce, was given up by parliament.

*At the Court of St. James's, the 14th
May, 1783.*

P R E S E N T,

The King's Most Excellent Majesty.

Orders of the King in council relative to the trade between the subjects of his Majesty's dominions, & the inhabitants of the United-States of America, made in pursuance of the powers given to his Majesty, by 23 Geo. III.

14th May,
1783.

WHEREAS, by an act of parliament passed this session, entitled "An Act for preventing certain instruments from being required from ships, belonging to the United-States of America, and to give to his Majesty, for a limited time, certain powers for the better carrying on trade and commerce between the subjects of his Majesty's dominions, and the inhabitants of the said United-States." It is *inter alia*, enacted, That during the continuance of the said act it shall and may be lawful for his Majesty in the council, by order or orders, to be issued and published from time to time, to give such directions and to make such regulations with respect to duties, drawbacks, or otherwise for carrying on the trade and commerce between the people and territories belonging to the crown of Great-Britain, and people

people and territories of the said United-States, as to his Majesty in council shall appear most expedient and salutary; any law, usage, or custom to the contrary notwithstanding. His Majesty doth therefore, by and with the advice of his privy council, hereby order and direct, That any oil, or any unmanufactured goods or merchandizes, being the growth or production of any territories of the said United-States of America, may, until further orders, be imported directly from thence into any of the ports of this kingdom, either in British or American ships, by British subjects, or by any of the people inhabiting in and belonging to the said United-States, or any of them; and such goods or merchandizes shall and may be entered and landed in any port in this kingdom upon payment of the same duties as the like sort of goods or merchandizes are or may be subject and liable to, if imported by British subjects, in British ships, from any British island or plantation in America, and no other; notwithstanding such goods or merchandize, or the ships in which the same may be brought, may be accompanied with the certificates or other documents heretofore required by law. And it is hereby further ordered and directed, That there shall be

the same drawbacks, exemptions, and bounties on merchandizes and goods exported from Great-Britain into the territories of the same United-States of America, or any of them as are allowed upon exportation of the like goods and merchandize to any of the islands, plantations, or colonies belonging to the crown of Great-Britain, in America :—And it is hereby further ordered and directed, That all American ships and vessels which shall have voluntarily come into any port of Great-Britain since the 20th of January, 1783, shall be admitted to an entry, and after such entry made, shall be entitled, together with the goods and merchandizes on board the same ships and vessels, to the full benefit of this order. And the Right Honourable the Lords Commissioners of his Majesty's Treasury, and the Lords Commissioners of the Admiralty are to give the necessary directions herein, as to them may respectively appertain.

W. FAWKENER.

*At the Court of St. James's, the 6th
of May, 1783.*

P R E S E N T,

*The King's Most Excellent Majesty in
Council,*

WHEREAS, by an act of parliament passed this session, entitled “ An Act for preventing certain instruments from being required from ships belonging to the United-States of America, and to give to his Majesty, for a limited time, certain powers for the better carrying on trade and commerce between the subjects of his Majesty's dominions, and the inhabitants of the said United-States.” It is amongst other things enacted, That during the continuance of the said act it shall and may be lawful for his Majesty in council, by order or orders to be issued and published from time to time, to give such regulations with respect to duties, drawbacks, or otherwise for carrying on the trade and commerce between the people and territories belonging to the crown of Great-Britain, and the people and territories of the said United-States, as to his Majesty in council shall appear most expedient

dient and salutary ; any law, usage, or custom to the contrary notwithstanding.— His Majesty doth therefore, by and with the advice of his privy council, hereby order and direct, That pitch, tar, turpentine; indigo, masts, yards, and bowsprits, being the growth and production of any of the United-States of America, may, until further order, be imported directly from thence into any of the ports of this kingdom, either in British or American ships, by British subjects or by any of the people inhabiting in and belonging to the said United-States, or any of them ; and that the articles above recited shall and may be entered and landed in any port of this kindom, upon payment of the same duties as the same are, or may be subject and liable to if imported by British subjects in British ships from any island or plantation in America, and no other, notwithstanding such pitch, tar, turpentine, indigo, masts, yards, and bowsprits, or the ships in which the same may be brought, may not be accompanied with the certificates or other documents heretofore required by law.— And his Majesty is hereby further pleased, by and with the advice aforesaid, to order and direct, That any tobacco, being the growth or production of any of the territories

tories of the said United-States of America,
 may likewise, until further order, be im-
 ported directly from them in manner above-
 mentioned, and may be landed in this king-
 dom, and upon the importers paying down
 in ready-money, the duty commonly called
 the *old subsidy*, such tobacco may be ware-
 housed under his Majesty's locks, upon
 the importer's own bond for payment of
 all the further duties due for such to-
 bacco, within the time limited by law, ac-
 cording to the net weight and quantity of
 such tobacco, at the time it shall be so
 landed, with the same allowances for the
 payment of such further duties and under
 the like restrictions and regulations in all
 other respects, not altered by this order,
 as such tobacco is and may be ware-
 housed by virtue of any act or acts of
 parliament in force. And the Right
 Honourable the Lords Commissioners of
 his Majesty's Treasury, and the Lords
 Commissioners of the Admiralty are to
 give the necessary directions herein, as
 to them may respectively appertain.

STEPH. COTTRELL.

At

*At the Court of St. James's, the 2d
of July, 1783.*

P R E S E N T,
*The King's Most Excellent Majesty in
Council.*

WHEREAS, by an act of parliament passed this session, entitled “ An Act for preventing certain instruments from being required from ships belonging to the United-States of America, and to give to his Majesty, for a limited time, certain powers for the better carrying on trade and commerce between the subjects of his Majesty's dominions, and the inhabitants of the said United-States.” It is amongst other things enacted, That during the continuance of the said act it shall and may be lawful for his Majesty in council, by order or orders, to be issued and published from time to time to give such directions, and to make such regulations with respect to duties, drawbacks, or otherwise, for carrying on the trade and commerce between the people and territories belonging to the crown of Great-Britain, and the people and territories of the said United-States, as to
his

his Majesty in council shall appear most expedient and salutary ; any law, usage, or custom to the contrary notwithstanding.— His Majesty doth therefore, with the advice of his privy council, hereby order and direct, That pitch, tar, turpentine, hemp, flax, masts, yards, bowsprits, staves, heading boards, timber, shingles, and all other species of lumber, horses, neat cattle, sheep; hogs, poultry, and all other species of live stock, and live provisions, peas, beans, potatoes, wheat, flour, bread, biscuit, rice, oats, barley, and all other species of grain, being the growth or production of the United-States of America, may, until further order, be imported by British subjects, and navigated according to law from any part of the United-States of America to any of his Majesty's West-India Islands; and that rum, sugar, molasses, coffee, cocoa nuts, ginger, and pimento, may, until further order, be exported by British subjects, in British built ships, owned by his Majesty's subjects, and navigated according to law, from any of his Majesty's West-India Islands to any port or place within the said United-States, on payment of the same duties on exportation and subject to the like rules, regulations, securities, and restrictions, as the same articles by law

law are now liable to, if exported to any British colony or plantation in America.— And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein, as to them may respectively appertain.

STEPH. COTTRELL.

23 Geo. 3. c.
29.

23 Geo. 3. c. 39. no manifest shall be required from any American vessel on coming into or clearing out of any British port, except bonds, but for discharging bonds given for landing goods in America, a certificate must be produced from a proper officer there certifying that the goods were duly landed; and his Majesty may make regulations for carrying on trade with America.

24 Geo. 3. c.
45.

24 Geo. 3. c. 45. his Majesty may, in council, make regulations for carrying on trade with British America, relative to iron, hemp, sail-cloth and Baltic goods.

27 Geo. 3. c. 3.

27 Geo. 3. c. 3. no flower, bread, rice, wheat, grain, staves, heading, shingles or lumber, shall be imported from any foreign West-India Island, into any British one.

In force till
April, 1788.

But

But in cases of emergency his Majesty's governors or commanders in chief of the West-India Islands, with their councils, may authorize the importation of such articles from other islands.

If goods, the growth of the United-States of America, be imported into the West-India Islands contrary to law, they are forfeited with the vessels and cargoes.

By 26 Geo. 3. c. 1. nothing but bread, ^{26 Geo. 3. c. 1.} flour, Indian corn, and live stock, shall be imported into Newfoundland, and the adjacent islands, from the American States; and such commodities shall be imported there in British built ships, licensed before June 30, 1787, by the commissioners of customs.

The masters of vessels shall deliver the license to the custom-house officer at the port of discharge, who shall give a certificate thereof. *Ibid.*

Goods imported contrary to this act shall be forfeited, and go, one third to the King, another third to the governor, and the remaining third to the officer. *Ibid.*

Enforced till 25th
March, 1788.

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By

27 Geo. 3. c.
27.

By 27 Geo. 3. c. 27. from Sept. 1, 1787, wool, cotton wool, indico, cochineal, drugs, cocoa, logwood, fustick, and all dying woods, hides, skins, and tallow, beaver, and all furs, tortoise shell, hard wood, or mill timber, mahogany, and all cabinet wood, horses, asses, mules, and cattle, the growth or produce of any plantations in America, and all coin, bullion, diamonds, and jewels, may be imported into the ports of Kingston, Savannah la Mar, Montego Bay, and Santa Lucia, in Jamaica, Saint George, in Grenada; Roseau, in Dominica; and Nassau, in New-Providence; in one-decked foreign European vessels, not exceeding seventy tons burthen.

If any articles not herein enumerated, shall be imported into any of the said ports, they and the vessel shall be forfeited. *Ibid.*

Rum, negroes, and goods legally imported, except masts, yards, bowsprits, pitch, tar, turpentine, and tobacco, and except iron, may be exported from the said ports, to such foreign colonies in America, in foreign one-decked European vessels, not exceeding seventy tons burthen; but the legality

legality of the importation of such goods shall be proved before exportation.

The above articles (*in Italics*) may be exported from the said islands to Great-Britain or Ireland, under the regulations of the navigation acts. *Ibid.*

If any goods of the growth or produce of Europe, or the East-Indies beyond the Cape of Good Hope, be exported from Grenada, Dominica, or Bahama, to any British colony in America, or the West-Indies they are forfeited with the vessels. *Ibid.*

No duty or fee shall be taken at Jamaica, Grenada, Dominica, and New-Providence, for any entrance or foreign vessels, on pain of forfeiting, as for exaction of greater fees than allowed. *Ibid.*

In force till September 1, 1792, and to the end of the next session.

The 27 Geo. 3. c. 39. appoints commissioners further to enquire into the losses and services of all such persons who have suffered in their rights, properties, and professions, during the late dissensions in America, in consequence of their loyalty and attachment to the British government.

27 Geo. 3. c. 39.

Commissioners The commissioners may examine parties on oath, send for persons or papers, and shall appoint clerks. *Ibid.*

Falſe claims. Persons delivering in fraudulent claims, ſhall be excluded from any compensation, and giving falſe evidence, ſhall be liable to the penalties of perjury. *Ibid.*

Commissioners &c. The commissioners in the colonies ſhall enquire into claims, and in caſe of difference of opinion, ſhall require the aſſiſtance of the governor, who, in caſe of the death of a commissioner, is to ſupply his place. *Ibid.*

The commissioners in America may, within fix months after the paſſing the act, take an oath before the governor or chief juſtice, which ſhall render their acts valid; and they may appoint perſons to travel in America to enquire into facts. *Ibid.*

Commissioners The commissioners ſhall give an account of their proceedings to the treaſury and ſecretaries of ſtate; and the treaſury ſhall pay *four thouſand pound* to the commissioners for paying clerks and others. *Ibid.*

The commissioners may receive half pay

as officers, on making affidavit, that they have not been employed under the crown, except as commissioners for the purposes of the present act; and in case of the death of a commissioner during the recess of parliament, his Majesty may appoint another.
Ibid.

In force for one
year, from July
15, 1787.

The 28 Geo. 3. c. 5. continues 23 Geo. 3. c. 39. and 24 Geo. 3. c. 45. until April 5, 1789.

28 Geo. 3. c.
5, &c.

Iron, hemp, sail-cloth, or other articles from the Baltic, which may be exported, being exported contrary to law, or goods being imported from America contrary to law, shall be forfeited with the vessels, &c.

In force till
April, 1789.

By 28 Geo. 3. c. 6. no goods shall be imported from the States of America into the West-Indies, Bahama, and the Bermuda or Somer's Islands, on forfeiture thereof, with the vessel and all her tackle, except tobacco, pitch, tar, turpentine, hemp, flax, masts, yards, bowsprits, staves, heading boards, timber, shingles, and lumber of any sort, horses, neat cattle, sheep, hogs, poultry, and live stock of any sort; bread, biscuit, flour, pease, beans, potatoes, wheat, rice,

28 Geo. 3. c. 6.

rice, oats, barley, and grain of any sort, being the growth or produce of such states.

None of the above goods shall be imported under like forfeiture, but by British subjects in British ships. *Ibid.*

West-India
goods, &c:

West-India goods not prohibited to be exported to Europe, and sugar, molasses, coffee, cocoa nuts, ginger and pimento, may be exported to the States, and cocoa nuts and ginger shall be liable to the same duties as if exported to a British colony; but no article except salt from Turks Islands, shall be so exported but by British ships, on forfeiture thereof with the vessel. *Ibid.*

Where a bond is required upon exportation to the British colonies, a similar one shall be required on exportation to the States; which shall be discharged on certificate of the due landing of the goods, from a British consul, or the officer appointed by the States, or a magistrate. *Ibid.*

Vessels belonging to the States in ballast may ship salt at Turks Island. *Ibid.*

Entry

Entry on oath must be made by the master of such vessels, declaring the country where built, number of men, master, owners, and for what purpose he enters the port, on pain of *one hundred pound. Ibid.*

A tonnage duty is to be paid in dollars at *five shillings* and *six-pence* per oz. for every ton burthen of vessels belonging to the States so coming to Turks Islands, to be ascertained by a British officer of the customs, (*according to the rule laid down in 13 Geo. 3.*) *Ibid.*

The duty shall be paid to the collector before the salt is laid on board, to be applied part to the payment of salaries and incidents at the port, the residue to the consolidated customs in England. *Ibid.*

No goods, except salt, shall be exported from Turks Islands to the British dominions, in America or the West-Indies, and no goods shall be exported from those islands except salt, and such goods as may be imported here duty free, on forfeiture thereof with the vessel. *Ibid.*

No tobacco, pitch, tar, turpentine, hemp,
flax,

flax, masts, yards, bowsprits, staves, heading boards, timber, shingles, or lumber of any sort, bread, biscuit, flour, pease, beans, potatoes, wheat, rice, oats, barley or grain of any sort, shall be imported from any foreign West-India Island into any British one on forfeiture thereof with the vessel. *Ibid.*

Importations,
&c.

But in cases of emergency his Majesty's governors or commanders in chief of the West-India Islands, with their councils, may authorize the importation of such articles for a limited time. *Ibid.*

No goods shall be imported from the States of Nova Scotia, Cape Breton, Saint John's or Newfoundland, on forfeiture thereof with the vessel. But the governors of such places, (except Newfoundland) with their councils, in cases of emergency, may authorize the importation of scantling, planks, staves, heading boards, shingles, hoops, or squared timber of any sort; horses, neat cattle, sheep, hogs, poultry, or live stock of any sort; bread biscuit, flour, pease, beans, potatoes, wheat, rice, oats, barley or grain of any sort, for a limited time only; and the king in council may empower the governor of Newfoundland

land to authorize, in case of necessity, the importation of bread, flour, Indian corn, and live stock, from the States, for the use of the fishermen, during the then next season only, to be imported according to the King's warrant, and in British ships. *Ibid.*

No goods shall be imported from the States into Quebec, on forfeiture thereof with the vessel. *Ibid.*

This act does not repeal 27 Geo. 3. c. 27.

Vessels forfeited may be seized by a ship of war, or an officer of customs. *Ibid.*

Act 29, Geo. III.

WHEREAS an act was made in the twenty-third year of the reign of his present Majesty, entitled "An Act for preventing certain instruments from being required from ships belonging to the United-States of America, and to give to his Majesty, for a limited time, certain powers for the better carrying on trade and commerce between the subjects of his Majesty's dominions, and the inhabitants of the said United-States;" which said act has been continued, by several subsequent acts, until the fifth day of April, one thousand seven hundred and eighty-nine: And whereas

An act to continue the laws now in force for regulating the trade between the subjects of his Majesty's dominions, and the inhabitants of the territories belonging to the United-States of America, so far as the same relate to the trade and commerce carried on between this kingdom and the inhabitants of the countries belonging to the said United-States,

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by

by an act, made in the twenty-fourth year of his present Majesty's reign, entitled " An Act to extend the powers of an Act, made in the twenty-third year of his present Majesty, for giving his Majesty certain powers for the better carrying on trade and commerce between the subjects of his Majesty's dominions, and the inhabitants of the United-States of America, to the trade and commerce of this kingdom with the British colonies and plantations in America, with respect to certain articles therein mentioned ;" the powers given by the said recited act were extended to the trade and intercourse between this kingdom and the British colonies and plantations in America, so far as the same might relate to iron, hemp, and sail-cloth, and other articles of the produce of any place bordering on the Baltic, which might be exported from this kingdom ; which said last mentioned act has also, by several subsequent acts, been continued until the said fifth day of April, one thousand seven hundred and eighty-nine: And whereas it is expedient that the said act of the twenty-third year of his present Majesty's reign, so far only as the same extends to trade and commerce carried on between this kingdom and the people and territories belonging

belonging to the United-States of America; and also that the said act of the twenty-fourth year of his present Majesty's reign should be further continued. May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That the said act of the twenty-third year of his present Majesty's reign, so far only as the same extends to the trade and commerce carried on between this kingdom and the people and territories belonging to the United-States of America; and that the said act, made in the twenty-fourth year of his present Majesty's reign, and all the matters and things therein contained, shall continue and be in force until the fifth day of April, one thousand seven hundred and ninety.

II. And be it further enacted, That if any iron, hemp, sail-cloth, or other articles of the produce of any place bordering on the Baltic, which may be lawfully exported from this kingdom, shall be exported from hence in any other manner than such as is or shall be allowed by
L 2 any

any law now in force, or which shall hereafter be in force, or by order of his Majesty in council; or if any goods or commodities whatever shall be imported from any of the territories of the United-States of America, into any of the ports of this kingdom, other than such as by any law now in force, or which shall hereafter be in force, or by virtue of this present act, or by order of his Majesty in council, now are, or hereafter shall be permitted to be imported; or if any goods or commodities shall be imported from the territories of the said United-States of America, into any of the ports of this kingdom, in any other manner whatever than such as is or shall be allowed by any law now in force, or which shall hereafter be in force, or by order of his Majesty in council, the same shall be forfeited, together with the ship or vessel in which such goods or commodities shall respectively be exported or imported, and all the guns, furniture, ammunition, tackle, and apparel belonging thereto.

Forfeiture, &c.

III. And be it further enacted, That every forfeiture incurred by virtue of this act, shall and may be sued for, prosecuted, and recovered, by such and the like ways, means, and methods, and the produce thereof

of disposed of, paid, and applied, in such and the like manner, and to such and the like uses and purposes, as any forfeiture incurred by any law respecting the revenue of customs may now be sued for, prosecuted, and recovered in the places where respectively the offence shall be committed; and that the produce thereof shall be disposed of, paid, and applied in like manner, in the said places respectively; any law, custom, or usage, to the contrary notwithstanding.

IV. And be it further enacted, That this act shall continue and be in force until the fifth day of April, one thousand seven hundred and ninety, and no longer,

In force till the 5th April 1790.

Under

Under this Title the Editor begs leave to refer the Reader to a late Publication, entitled, " The Laws of New-York in force against the Loyalists, and affecting the Trade of Great-Britain." At the same Time observing that the United-States having now respectively complied with the Requisition of Congress (in the sub-joined Letter,) many of these Laws, that militated against the Claims of the Creditor, are now become more open to Investigation, and the Payment of Debts more easily attainable.

Circular Letter transmitted by the United-States in Congress assembled, to the Governors of the respective States.

S I R,

OUR secretary for foreign affairs has transmitted to you, copies of a letter to him, from our minister at the Court of London, of the 4th day of March, 1786, and of the papers mentioned to have been inclosed in it.

We have deliberately and dispassionately examined and considered the several facts and matters urged by Great-Britain, as infractions of the treaty of peace on the part of America ; and we regret, that in some of the States, too little attention appears to have been paid to the public faith pledged by that treaty.

Not only the obvious dictates of religion, morality, and national honour, but also the first principles of good policy demand a candid and punctual compliance with engagements constitutionally and fairly made. Our national constitution
having

Having committed to us the management of the national concerns, with foreign States and Powers, it is our duty to take care that all the rights which they ought to enjoy within our jurisdiction, by the laws of nations and the faith of treaties, remain inviolate. And it is also our duty to provide, that the essential interests and peace of the whole confederacy be not impaired or endangered by deviations from the line of public faith, into which any of its members may, from whatever ~~cause~~, be unadvisably drawn.

Let it be remembered, that the Thirteen Independent Sovereign States, have, by express delegation of power, formed and vested in us general, though limited, sovereignty, for the general and national purposes specified in the confederation. In this sovereignty they cannot severally participate, (except by their delegates,) nor with it have concurrent jurisdiction, for the ninth article of the confederation most expressly conveys to us the sole and *exclusive* right and power of determining on war and peace, and of entering into treaties, alliances, &c.

When, therefore, a treaty is constitutionally made, ratified, and published by us, it immediately becomes binding on the whole nation, and superadded to the laws of the land without intervention or fiat of State legislatures. Treaties derive their obligations from being compacts between the sovereign of this, and the sovereign of another nation, whereas laws or statutes derive their force from being acts of a legislature competent to the passing of them.

Hence it is clear, that treaties must be implicitly received and observed by every member of the nation; for a State legislature are not competent to the making of such compact, or treaties, so neither are they competent in that capacity authoritatively to decide on, or ascertain the construction and sense of them. When doubts arise respecting the construction of State laws, it is not unusual, nor improper, for the State legislatures by explanatory or declaratory acts to remove those doubts; but the case between laws and compacts or treaties, is in this widely different; for when doubts arise respecting the sense and meaning of a treaty, they are so far from being cognizable by a State legislature, that the United-States in
Congress

Congress assembled, have no authority to settle and determine them. For, as the legislature only which constitutionally passes a law, has power to revise and amend it; so the sovereigns only who are parties to the treaty, have power by mutual consent and posterior articles to correct or explain it.

In cases between individuals, all doubts respecting the meaning of a treaty, like all doubts respecting the meaning of a law, are in the first instance mere judicial questions, and are to be heard and decided in the courts of justice, having cognizance of the causes in which they arise, and whose duty it is to determine them according to the rules and maxims established by the laws of nations for the interpretation of treaties. From these principles it follows of necessary consequence, that no individual State has a right by legislative acts to decide and point out the sense in which their particular citizens and courts shall understand this or that article of a treaty.

It is evident that a contrary doctrine would not only militate against the common and established maxims, and the ideas relative to this subject; but would prove no less ludicrous in practice than it is irrational in theory; for in that case the same article of the same treaty might, by law, be made to mean one thing in New-Hampshire, another thing in New-York; and neither the one nor the other of them in Georgia.

How far such legislative acts would be valid and obligatory even within the limits of the State passing them, is a question which we hope never to have occasion to discuss. Certain, however, it is, that such acts cannot bind either of the contracting Sovereigns, and consequently cannot be obligatory on their respective nations.

But if treaties and every article in them, be (as they are and ought to be) binding on the whole nation; if individual States have no right to accept some articles and reject others; and if the impropriety of State acts to interpret and decide the sense and the construction of them be apparent; still more manifest must be the impropriety of State acts to controul, delay, or modify the operation and execution of these national compacts.

When

When it is considered that the several States assembled by their delegates in Congress, have express power to form treaties, surely the treaties so formed are not afterwards to be subject to such alterations as this or that legislature may think expedient to make, and that too without the consent of either of the parties to it; that is, in the present case, without the consent of all the United-States, who collectively are parties to this treaty on the one side, and his Britannic Majesty on the other. Were the legislatures to possess and exercise such power, we should soon be involved as a nation in anarchy and confusion at home; and in disputes which would probably terminate in hostilities and war with the nations with whom we have formed treaties. Instances would then be frequently of treaties fully executed in one State and only partly executed in another, and of the same article being executed in one manner in one State, and in a different manner, or not at all, in another State. History furnishes no precedent of such liberties taken with treaties made under form of a law in any nation.

Contracts between nations, like contracts between individuals, should be faithfully executed, even though the sword in the one case, and the law in the other, did not compel it. Honest nations, like honest men, require no constraint to do justice; and though impunity and the necessity of affairs may sometimes afford temptations to pare down contracts to the measure of convenience, yet, it is never done but at the expense of that esteem, confidence, and credit, which are of infinitely more worth than all the momentary advantages which such expedients can extort.

But although contracting nations cannot, like individuals, avail themselves of courts of justice to compel performance of contracts, yet an appeal to heaven and to arms is always in their power, and often in their inclination.

But it is their duty to take care that they never lead their people to make and support such appeals, unless the sincerity and propriety of their conduct affords them good reasons to rely with confidence on the justice and protection of heaven.

Thus much we think it useful to observe, in order to explain the principles on which we have unanimously come to the following resolutions, viz.

RESOLVED, " That the legislatures of the several States cannot of right pass any acts for interpreting, explaining, or construing a national treaty, or any part or clause of it; nor for restraining, limiting, or in any manner impeding, retarding, or counteracting the operation and execution of the same; for that, on being constitutionally made, ratified, and published, they become in virtue of the confederation part of the law of the land, and are not only independent of the will and power of such legislature, but also binding and obligatory on them."

As the treaty of peace, so far as it respects the matter and things provided for in it is a law to the United-States, which cannot by all or any of them be altered or changed. All State acts establishing provisions relative to the same objects which are incompatible with it, must in every point of view be improper*. *Such acts do nevertheless exist;* but we do not think it necessary either to enumerate them particularly, or to make them severally the subjects of discussion. It appears to us sufficient to observe, and insist, that the treaty ought to have free course in its operation and execution; and that all obstacles interposed by State acts be removed. We mean to act with the most scrupulous regard to justice and candour towards Great-Britain, and with an equal degree of delicacy, moderation, and decision, towards the States who have given occasion for these discussions.

For these reasons we have in general terms, " Resolved, " That all such acts, or parts of acts, as may be now existing in any of the States, repugnant to the treaty of peace, ought to be forthwith repealed; as well to prevent their continuing to be regarded as violations of that treaty, as to

* See the act of the several legislatures passed in the States against the Loyalists, and also on the subject of commerce, &c. &c.

“ avoid the disagreeable necessity there might otherwise be of
“ raising and discussing questions touching their validity and
“ obligation.”

Although this resolution applies strictly only to such of the States as have passed the exceptionable acts alluded to; yet, to obviate all future disputes and questions, as well as to remove those which now exist, we think it best that every State, without exception, should pass a law on the subject. We have, therefore, “ Resolved, That it be recommended to the several States to make such repeal, rather by describing or reciting the said acts; and for that purpose to pass an act, declaring in general terms that all such acts, and parts of acts, repugnant to the treaty of peace between the United-States and his Britannic Majesty, or any article thereof, shall be, and hereby are repealed; and that the courts of law and equity in all cases and questions cognizable by them, respectively and arising from, or touching the said treaty shall decide and adjudge according to the true intent and meaning of the same; any thing in the said acts, or parts of acts, to the contrary thereof notwithstanding.”

Such laws would answer every purpose and be easily formed. The more they were of the like tenor throughout the States the better, They might each recite,

“ Whereas certain laws or statutes made and passed in some
“ of the United-States are regarded and complained of as
“ repugnant to the treaty of peace with Great-Britain, by
“ reason whereof not only the good faith of the United-States
“ pledged by that treaty has been drawn into question, but
“ their essential interests under that treaty greatly affected.
“ And whereas justice to Great-Britain, as well as a regard to
“ the honour and interests of the United-States, require that the
“ said treaty shall be faithfully executed, and that all obstacles
“ thereto, and particularly such as do, or may be construed to
“ proceed from the laws of this State be effectually removed;
“ Therefore,

“ Be it enacted by and it is
“ hereby enacted by the authority of the same, that such of the
M a “ acts

“ acts, or parts of acts, of the legislature of this State as are
 “ repugnant to the treaty of peace between the United-States
 “ and his Britannic Majesty, or any article thereof, shall be,
 “ and hereby are repealed; and further, that the courts of law
 “ and equity within this State, be, and they hereby are directed
 “ and required in all causes and questions cognizable by them
 “ respectively, and arising from or touching the said treaty,
 “ to decide and adjudge according to the tenor, true intent
 “ and meaning of the same, any thing in the said acts, or parts
 “ of acts, to the contrary thereof, in any wise notwith-
 “ standing.”

Such a general law, would, we think, be preferable to one that should minutely enumerate the acts and clauses intended to be repealed, because omissions might accidentally be made in the enumeration, or questions might arise, and, perhaps, not be satisfactorily determined, respecting particular acts and clauses, about which contrary opinions may be entertained.—By repealing in general terms all acts and clauses repugnant to the treaty, the business will be turned over to its proper departments, viz: The judicial. And the courts of law will find no difficulty in deciding whether any particular act or clause is, or is not contrary to the treaty*. Besides, when it is considered that the judges in general are men of character and learning, and feel as well as know the obligations of office and the value of reputation, there is no reason to doubt that their conduct and judgment relative to these, as well as to other judicial matters, will be wise and upright.

Be pleased, Sir, to lay this letter before the legislature of your State without delay. We flatter ourselves that they will concur with us in opinion, that candour and justice are as necessary to true policy as they are to sound morality; and that the most honourable way of delivering ourselves from the embarrassment of mistakes is fairly to correct and amend them. It certainly is time that all doubts respecting the public faith be removed, and that all questions and difference between us and Great-Britain be amicably and finally settled.

* This seems to leave too much to the power of the judge,

The States are informed of the reasons why his Britannia Majesty continues to occupy the frontier ports which by the treaty he agreed to evacuate, and we have the strongest assurances that an exact compliance with the treaty on our part will be followed by a punctual performance of it on the part of Great-Britain.

It is important that the several legislatures should, as soon as possible, take these matters into consideration; and we request the favour of you to transmit to us an authentic copy of such acts and proceedings of the legislature of your State as may take place on the subject and in pursuance of this letter,

By order of CONGRESS,

(Signed)

ARTHUR ST. CLAIR,
PRESIDENT.

CHAP.

C H A P. IV.

OF THE REVENUE LAWS.

See Chap. II. & III.

Books referred
to.

FOR competent information on this subject it will be necessary to report to the law codes of the several States *Lord Sheffield's* and *Champion's* Treatises on American Commerce; a *volume compiled by Messrs. Simm's and Truen*, under direction of the commissioners of the customs, in 1782; and the various other publications upon the subject.

Different regu-
lations in dif-
ferent States.

Different regulations necessarily prevail in the acts of their different legislatures, from the influence of contrary and opposite interests. In some of the States no British ship can import the produce of the West-Indies, in others the importation is subject to a duty of so much per ton, on every British vessel entering their harbours, and in others are totally prohibited.

Revenue laws
very strict.

These laws are in general very strict and severe, particularly so in Virginia, where the smallest quantity of goods found in a ship,

ship, not specified in the invoice or manifest, will condemn both ship and cargo. And the officers of the customs have power to open all packages whatsoever.

Vessels have lately been condemned in the court of admiralty for the concealment of goods to the value of *five pounds* currency, and even where the supposition was *reasonable* that such concealment had been accidental and unintentional.

It is necessary for every master of a vessel on his arrival at any of the ports in the United-States, to make immediate enquiry into the rules observed at the custom-house. The following are those observed at New-York.

Observation.

All goods entered, the duty on which amounts to *twenty pounds*, may be bonded for, payable in *six* months, if said goods are imported from any other place than the West-Indies; if from the West-Indies the duty is payable in *four* months. And if any part of said goods are exported to any port within the United-States, of so much as is exported the duty is drawn back provided said goods are exported within *ninety* days from the time of the entry of the

Rules observed in the custom-house at New-York.

the vessel in which the goods were imported.

If the duty on goods entered does not amount to *twenty pounds* the duty must be paid down, and no drawback allowed on such goods if exported.

C H A P.

CONGRESS of the UNITED-STATES.

*Begun and held at the city of New-York, on
Wednesday, the 4th of March, 1789.*

AN ACT

For laying a Duty on Goods, Wares, and Merchandizes imported into the United-States.

WHEREAS it is necessary for the support of government, for the discharge of debts of the United-States, and the encouragement and protection of manufactures, that duties be laid on goods, wares, and merchandizes imported.

Be it enacted by the Senate and House of Representatives of the United-States of America in Congress assembled, that from and after the first day of August next ensuing, the several duties hereinafter mentioned shall be laid on the following goods, wares, and merchandizes imported into the United-States, from any foreign port or place, that is to say:

	Cents,
On all distilled spirits of Jamaica proof imported from any kingdom or country whatsoever — per gal.	10
On all other distilled spirits — — — — —	8
On molasses — — — — —	2½
On Maderia wine — — — — —	18
On all others — — — — —	10
On every gallon of beer, ale, or porter in casks —	5
On all cyder, beer, ale, or porter in bottles per dozen	20
On malt — — — — — per bushel	10
On brown sugars — — — — — per pound	1
On loaf sugars — — — — —	3
On all sugars — — — — —	1½
On coffee — — — — —	1½
On cocoa — — — — —	1
On all candles of tallow — — — — —	2
On all wax or spermaceti per pound — — — — —	6
On cheese — — — — —	4
On soap — — — — —	2

N

On

	Cents.
On boots ————— per pair	50
On all shoes, slippers, or goloshes made of leather ———	7
On all shoes or slippers made of silk or stuff ———	10
On cables for every 112 pounds ———	75
On tarred cordage, for every 112 pounds ———	75
On untarred ditto, and yarn, for every 112 pounds ———	90
On twine or packthread, for every 112 pounds ———	200
On all steel unwrought, for every 112 pounds ———	56
On all nails and spikes ——— per pound	1
On salt ——— per bushel	6
On manufactured tobacco ——— per pound	6
On snuff ———	10
On indigo ———	16
On wool and cotton cards ——— per dozen	50
On coal ——— per bushel	4
On pickle fish ——— per barrel	75
On dried fish ——— per quintal	50

On all teas imported from China or India in ships built in the United-States, and belonging to a citizen or citizens thereof, or in ships or vessels built in foreign countries, and on the 16th Day of May last wholly the property of a citizen or citizens of the United-States, and so continuing until the time of importation as follows :

	Cents.
On bohea tea ——— per pound	6
On all fouchong or other black teas ———	10
On all hyson teas ———	20
On all other green teas ———	12

On all teas imported from Europe in ships or vessels built in the United-States, and belonging wholly to a citizen or citizens thereof, or in ships or vessels built in foreign countries, and on the 16th day of May last wholly the property of a citizen or citizens of the United-States, and so continuing until the time of importation as follows :

	Cents.
On bohea tea ——— per pound	8
On all fouchong, or black teas ———	13
On all hyson teas ———	26
On all other green teas ———	16

On all teas imported in any other manner than as above mentioned, as follows :

On

		<i>Cents.</i>
On bohea tea	per pound	15
On all fouchong or other black teas		22
On all hyson teas		45
On all other green teas		27

On all goods, wares, and merchandizes, or other than tea imported from China or India, in ships not built in the United States, and not wholly the property of a citizen or citizens thereof, nor in vessels built in foreign countries, and on the 16th day of May last wholly the property of a citizen or citizens of the United States, and so continuing until the time of importation, twelve and a half per centum ad valorem.

On all looking-glasses, window and other glafs (except black quart bottles)	} 10 per cent. ad val.
On all China, stone, and earthen ware	
On gun-powder	
On all paints ground in oil	
On shoe and knee buckles	
On gold and silver lace, and On gold and silver leaf,	

The following Articles are at Seven and a half per centum, ad valorem.

- On all blank books
- On all writing, printing, or wrapping paper, paper hangings and pasteboard
- On all cabinet wares
- On all buttons
- On all saddles
- On all leather gloves
- On all hats of beaver, fur, wool, or mixture of either
- On all millinery ready made
- On all castings of iron, and upon slit and rolled iron
- On all leather tanned or tawed, and all manufacture of leather, except such as shall be otherwise rated
- On canes, walking sticks and whips
- On cloathing ready made
- On all brushes
- On gold, silver and plated ware, and on jewellery and plate work
- On anchors, and all wrought tin and pewter ware
- On playing cards, per pack, ten cents.

On every coach, chariot, or other four wheel carriage, and on every chaise, solo, or other two wheel carriage, or parts thereof, } 15 per cent. ad val.

On all other goods, wares and merchandize, five per centum on the value thereof, at the time and place of importation, except as follows: salt-petre, tin in pigs, tin in plates, lead, old pewter, brass wire, copper in plates, wool, cotton, dying woods and dying drugs, raw hides, beaver, and all other furs and deer skins.

And be it further enacted by the authority aforesaid, That from and after the first day of December, which shall be in the year one thousand seven hundred and ninety, there shall be laid a duty on every one hundred and twelve pounds weight of hemp, imported as aforesaid, of sixty cents; and on cotton per pound three cents.

And be it enacted by the authority aforesaid, That all duties paid, or secured to be paid upon any of the goods, wares, and merchandizes as aforesaid, except on distilled spirits, other than brandy and geneva, shall be returned or discharged upon such of the said goods, wares or merchandizes, as shall within twelve months after payment made, or security given, be exported to any country, without the limits of the United-States, as settled by the treaty of peace; except one per centum on the amount of the said duties, in consideration of the expence which shall have accrued by the entry and safe keeping thereof.

And be it enacted by the authority aforesaid, That there shall be allowed and paid on every quintal of dried, and on every barrel of pickled fish, of the fisheries of the United-States, and on every barrel of salted provision of the United-States, exported to any country without the limits thereof, in lieu of a drawback of the duties imposed on the importation of the salt employed and expended therein, viz:

On every quintal of dried fish	—	—	5 cents.
On every barrel of pickled fish	—	—	5 —
On every barrel of salted provision	—	—	5 —

And be it further enacted by the authority aforesaid, That a discount of ten per cent. on all the duties imposed by this act, shall

shall be allowed on such goods, wares, and merchandizes, ~~or~~ shall be imported in vessels built in the United-States, and which shall be wholly the property of a citizen or citizens thereof, or in vessels built in foreign countries, and on the sixteenth day of May last, wholly the property of a citizen or citizens of the United-States, and so continuing until the time of importation.

And be it further enacted by the authority aforesaid, That this act shall continue and be in force until the first day of June, which shall be in the year of our Lord, one thousand seven hundred and ninety-six, and from thence until the end of the next succeeding session of Congress, which shall be held thereafter, and no longer.

FREDERICK AUGUSTUS MUEHLBERG,
Speaker of the House of Representatives.

JOHN ADAMS, *Vice President of the United*
States, and President of the Senate.

Approved, July 4, 1789.

GEORGE WASHINGTON,
President of the United-States.

N. B. 100 cents is a dollar.

C H A P. V.

*Of the Inferior and Superior Courts
of Civil and Criminal Jurisdiction,
—Attornies—Counsel, &c. &c.*

Inferior courts
of civil jurif-
diction in the
West-Indies.

THERE are inferior courts of civil jurisdiction throughout all the Provinces, the West-India Islands, and the United-States.

Jamaica.

In Jamaica, besides the *Superior Court* of general jurisdiction throughout the Island, there are courts peculiar to certain districts which hold plea to the amount of *twenty pounds* only.

Windward
Islands.

In some of the Windward Islands the chief justice of the superior court sits alone to try actions to a certain amount without a jury.

In other Islands personal actions, *to a certain amount*, are brought on before all the judges of the court, and are decided without a jury.

In

In Nova-Scotia, and New-Brunswick, the courts are as nearly as possible analogous to those of Westminster-Hall.

In Nova-Scotia, New-Brunswick, & Canada.

Canada.—See page 31.

In the United-States there are *Inferior Courts* held before justices of the peace, in which all matters of debt or damage are tried under *forty shillings*.

In the United States.

In some States these are denominated *Courts of Conscience*, and in others *County Courts*; and in general they take cognizance of all matters under *ten pounds*.

No appeal is allowed where the debt does not exceed that sum.

The form of process is set out at length in the respective acts of assembly.

They have in general a court of *Common-Pleas* analogous to that of Westminster-Hall; and a *Superior Court* that answers to that of the court of King's-Bench, to which are annexed commissions of *Oyer and Terminer* and *General Gaol Delivery*. A court of *Error or Appeals*; a court of *Admiralty*, and in many of the States a court of *Chancery*.

Common-pleas King's-Bench, and other courts

Where

Where there is no such court the judges have a power of equitizing.

Circuits. The judges make their circuits twice in the year as in England.

Courts in New-York. The following are the courts in the State of New-York *.

The justices court. I. The *Justices Court* holds pleas for the determination of causes under *ten pounds*. They proceed in a very summary way.

The justices have also a jurisdiction with respect to crimes under the degree of grand-larciny.

From this court an appeal lies to the sessions.

Sessions. II. The *Court of Sessions*, which very much resembles the same court in England.

Common-pleas. III. The court of *Common-Pleas* takes cognizance of all causes where the matter in demand is above the value of *ten pounds*, and the practice is nearly the same as that

* For the appointment of officers and justices of the peace. See the constitution at the end.

of the *Common-Pleas* at Westminster. The clerk issues the writs, enters the minutes, and keeps the records of the county. It is held *four* times in the year, and the judges together with some of the justices hold at the same time a *Court of General Sessions of the Peace*.

IV. The *Supreme Court*. The jurisdiction of which extends throughout the State, and is analogous to the court of King's-Bench at Westminster. It has *four* terms, and always sits at New-York.

V. The court of *Chancery*.

Other courts

VI. The court of *Admiralty*.

VII. The *Perogative Court*.

VIII. *The Court of the Governor and Council*.

In all of which the proceedings are similar to those in England.

Proceedings.
See p. 32—33

In Jamaica the superior court of common law is called the supreme court, and has jurisdiction like that of the King's-Bench, Common-Pleas, and Exchequer.

Superior courts
of civil jurisdiction in Jamaica.

The judges here go the circuit twice in the year.

Barbadoes. In Barbadoes there is a court of *Common-Pleas* in every district, and distinct judges in each.

Jamaica, Saint Christopher, & Nevis. In Jamaica, St. Christopher, and Nevis, the *Supreme Court* has the same jurisdiction as the King's-Bench and Common-Pleas.

Barbadoes, Antigua, &c. In Barbadoes, Antigua, and Montserrat, the *Criminal Court* is distinct from the *Common-Pleas* and consists of a number of judges.

In Antigua there is but one court of *Common-Pleas* for the whole island.

Other Leeward Islands. In the rest of the Leeward Islands the *Superior Court of Common Law* is a King's-Bench and Common-Pleas.

Mode of bringing actions. The mode of bringing an action in the *United-States* and the *West-India* islands almost all differ, but the following observations on their judicial proceedings will apply to most of them.

In the *West-India* islands the action is commenced by filing the declaration in the office,

office, and the copy of such declaration with a summons is served on defendant by one of the marshal's bailiff's, but if defendant is absent from the island and has appointed an attorney, then if the letter of attorney is registered, in the secretary or register's office, the declaration is served upon him or left at his usual place of abode: if no such letter of attorney is registered in the office, then if the defendant has a plantation on the island, the declaration, &c. must be served on the overseer; and if neither is to be met with, it must be left at the house upon such plantation, if there is no plantation (the property of the defendant) it must be nailed on the court-house door.

All original process, and even writs of *dedimus potestatem* to commissioners to take renunciation of dower, are issued by the courts of common law, and tested in the name of the chief justice. No writs are issued out of the chancery. Original process, &c.

No real actions are in use, except actions in dower. The method of proceeding in the courts of the United-States, (in criminal cases) is similar to that of the superior courts in England, except that in defending a prisoner, counsel are allowed to Real actions.

addresses the jury upon facts and evidence, as well as upon points of law.

Observations
of Lord Hale
applicable to
the United-
States.

Lord chief justice Hale, in his history of the Common Law, has the following remark on the courts of justice in the several *Counties* in England, when the property of the subject was determined in *those* courts.

" All the Business of any moment was carried by factions or parties; for the freeholders being generally the judges, and conversing one among another, and being as it were, the chief judges, not only of the fact, but of the law. Every one that had a suit there sped as they could make parties; and men of great power and interest in the country did easily overbear others in their own causes, or in such wherein they were interested either by relation of kindred, tenure, service, dependence, or application."

The United-States are, in some degree, nearly in the same situation with the courts in England, at the time mentioned by Hale, and there is too much reason to fear that similar causes will produce similar effects. Many families are possessed of lands of vast extent—they are connected by kindred with the gentlemen of the law, both of the bench
and

and bar, most of whom are themselves interested in some of these boundless land patents. It is not improbable that combinations may be made between the bench and bar whereby partial juries may be procured. In such cases property must become precarious to people of different interests from them.

This is very much the case in South and North-Carolina.

The lawyers throughout America, who are appointed to preside on the bench, are generally men of eminence in the profession, and of the first character in point both of integrity and ability ; *but it is certain that too much is left in their power**.

In Jamaica and Barbadoes † the departments of counsel and attorney are distinct. In all the other islands, and throughout the States, they are united.

Counsel and attorney.

* See the account of law proceedings in Connecticut in Peters's Hist. p. 298.

† As to the admission of barristers to practice in the West-Indies, by the license of a governor, without having been called to the bar in England and for many other interesting particulars relating to the profession, see Caribbeana, vol. 1. 382. c.

The same person who manages the process, and brings the cause into court, advises his client and pleads the cause. The mere knowledge of practice avails nothing, nor is eminence to be here obtained by the utmost extent of legal knowledge, unaccompanied with the accomplishments of the orator. The palm is to him who has the handsomest way of opening his mouth.

C H A P.

C H A P. VI.

Of the Court of Admiralty and Affairs
Maritime--Captures--Capitulations,
&c. &c. &c.*

THE court of admiralty has three sorts Court of admiralty.
of jurisdictions.

I. It decides all maritime causes.

II. It determines the legality of captures
in time of war.

III. It has a concurrent jurisdiction with Jurisdiction, &c.
the courts of record, where penalties and
forfeitures are incurred by act of parliament, (in the dominions of England,) or act
of assembly (within the United-States.)

The proceedings both in the United- Proceedings.
States, British Provinces, and West-Indies,

* There are very few admiralty precedents in print; some are to be found in Stokes's Colony Constitution, to which useful and excellent publication the reader is referred.

are the same as in the court of admiralty in England.

See Blackfts.
Comments, vol.
2. p. 69.

From the determination of this court in the British Provinces, and West-Indies, an appeal lies to the high court of admiralty in England, and to the King in council. In the United-States the appeal is to the governor and council.

Prizes, &c.

When two powers are at war they have a right to make prizes of the ships, goods, and effects of each other upon the high seas. Whatever is the property of an enemy may be acquired by capture at sea, but the property of a friend cannot be taken provided he observe a neutrality.

By the maritime law of nations, universally and immemorially received, there is an established method of determination whether the capture be or be not lawful prize.

Sale, &c.

Before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties must be heard, and condemnation thereupon as a prize in a court of admiralty, judging by the law of nations and treaties.

The

The proper and regular courts for these Court, &c.
condemnations is the court of that State to
whom the captor belongs.

A claim of ship or goods must be sup- Claim
ported by the oath of somebody at least as
to belief.

If the sentence of the admiralty is erro- Court of review
neous, there is in every maritime country
a *Superior Court of Review*, to which the
aggrieved party may appeal. The court is
also governed by the law of nations, and
the treaties subsisting with that neutral power
whose subject is a party before them.

In Great-Britain and her provinces, the Capture, &c.
property of prizes being given in war to the
captors, the King cannot arbitrarily release
the capture; nor can the property of a
foreign subject, taken as prize on the high
seas, be affected by laws peculiar to Eng-
land.

Every State has an equal right to erect Admiralty
admiralty courts, for the trial of prizes courts, &c.
taken by virtue of their respective com-
missions; but neither has a right to try
the prizes taken by the other, or to reverse
the sentences given by the others tribunals.

The only method of rectifying their errors is by appeal to the superior court.

This is the clear law of nations, and by this method prizes have always been determined in every other maritime country in Europe as well as in England.

Appeals

In case of prize vessels taken in time of war in any part of the world and condemned in any court of admiralty as lawful prize, the appeal lies to certain commissioners of appeals, consisting of the privy council; and not to judges, delegates; and this by virtue of diverse treaties with foreign nations, by which particular courts are established in all the maritime countries of Europe for the decision of the legality of prizes.

Court of admiralty, &c.

The original court in which the question of legality is triable is the court of admiralty, the court of appeals is in effect the King's privy council, the members of which are in consequence of treaties commissioned under the great seal for this purpose*.

* See Stat. 22. Geo. II. c. 3. and 3 Blackstone's Comments. p. 69, 70.

P R A C T I C E.

THE warrant must be executed by a person who can write and read, whose name must be first inserted in the blank left in the beginning of the warrant for that purpose, by going on board the ship and producing the warrant to the master, commanding officer, or some of the crew on board, and declaring before them that he doth by virtue of the warrant, arrest the said ship, her tackle, apparel, and furniture, at the suit of *I. B. W. E.* and Co. late mariners of the said ship, in an action of £. and that he doth cite all persons in general having, or pretending to have, any right, title, or interest in the premises, to appear at the time and place, and to the effect mentioned in the said warrant. He then affixes a copy on the main-mast and leaves it there, and after filling up the blanks in the certificate indorsed on the back of the warrant, he subscribes his name thereto, and makes oath thereof before a magistrate, and then returns the warrant to the admiralty office.

Instructions for the execution of a warrant from the court of admiralty to arrest a ship, &c.

Certificate of
the service of a
warrant from
the admiralty
to arrest a ship.

If there is any apprehension of the
masters running away with the ship, the sails
may be taken on shore and a man sent on
board to secure her under the arrest.

*ON the _____ day of _____ in the
year of our Lord _____ this warrant was
duly executed by arresting the within menti-
oned ship, the _____ (whereof _____
master) her tackle, apparel, and furniture,
lying at _____ and by citing all persons in
general having, or pretending to have, any
right, title, or interest therein to appear at
the time and place and to the effect within
mentioned.*

D. L.

*On the _____ day of _____ in the
year of our Lord _____ the aforesaid
D. L. was sworn to the truth of the above
certificate before me,*

W. R.

ST. CHRISTOPHERS,

*Libel for wages. In the court of Vice Admiralty on the 2d
April, 1767, before the Honourable R. H.
Esq. Judge Surrogate of the Court of Vice
Admiralty held for the Island of St.
Christopher.*

T. E. late

T. E. late mariner of a certain merchant ship called the — whereof — is master, against the said ship, her apparel and furniture, and also against the said — master, in a certain cause of subtraction of wages both civil and maritime.

UPON which day H. P. as lawful proctor of the said T. E. by all better and more effectual ways and means, and also to all intents and purposes in law whatsoever,

doth say, alledge, and in law propound articulately as follows,—That is to say :

First.—That in the month of June, in the year of our Lord one thousand seven hundred and sixty-six, the said ship whereof the said I. N. then was and is now master, being at the port of Bristol, in the kingdom of Great-Britain, and designed on a voyage to the coast of Guinea, and from thence to the West-Indies, and so back again to the said port of Bristol. The said I. N. did by himself or agent, upon the high and open seas within the ebbing and flowing thereof, and jurisdiction of the court of admiralty of the Island of Saint Christopher, ship and hire the said T. E. to serve as second mate on board the said ship, on the said voyage, at and after the rate of three pounds, sterling money of Great-Britain, by the month; and the said T. E. did, on or about the eighteenth day of June, aforesaid, go on board and enter into the service of the said ship,

*ship, and the said ship proceeded on the said voyage, and took in a cargo of slaves on the said coast of Guinea, and then came to the said Island of Saint Christopher, where she delivered her said loading; and the said T. E. served as second mate aforesaid, on board the said ship, from the said eighteenth day of June aforesaid, to the third day of March aforesaid, being eight months and five days, which amount to the sum of twenty-four pounds seven shillings and six-pence, whereof received in sterling money, the sum of seven pounds, which being deducted from the sum of twenty-four pounds seven shillings and six-pence, there remains due to the said T. E. the sum of seventeen pounds seven shillings and six-pence; and the said T. E. well and truly performed his office and duty of second mate on board the said ship during all the said time, and was obedient to the lawful commands of the said master thereof, and well and truly deserved the said monthly wages, and so much or greater monthly wages than was usually given to persons serving in such capacity in other ships on the like voyage; and this was and is true, and so much the said I. N. hath confessed and acknowledged to be true; and the party propo-
nent doth alledge and propound of any other time, and place, and salary, wages, sum and sums of money, and of every thing else, as shall
appear*

appear from the proofs to be made in this cause.

Second.—That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame and report, and of which legal proof being made, the party proponent prays right and justice to be effectually administered to him and his party in the premises, &c.

A *capitulation* is a voluntary surrender to save the enemy the trouble, and parties surrendering the bloodshed and total confiscation which must follow further resistance,

Capitulation
&c.
Definition.

The following consequences naturally result from this general view of a conditional surrender.

Consequences

I. That the rights which capitulants preserve depend on the letter of the capitulation.

II. That the conquered sovereign has no right to deprive his old subjects of the advantages he has thus stipulated for them, but is bound to see that the terms secured are duly observed.

The

Right of Cap-
tured.

The right of capture is derived from the sovereign, and it lies with him (only) to specify whom they may treat as enemies, and to prescribe limits to their commissions*.

Reprisals.

B. 2. c. 2. s. 7.

Grotius speaking of the law of reprisals, as distinguished from that of a general war, has the following passage.

“ By the law of nations all the subjects of the sovereign from whom one has received an injury, who are such from a permanent cause (*i. e.*) settled in the country, are liable to this law of reprisals, whether they be natives or foreigners; but not if they be only travellers or sojourners there but for a little time. For these reprisals are much of the same nature with taxes which

* Capitulators from misapprehension of their effects being liable to confiscation (as belonging to the enemies of Great-Britain,) are often induced to disguise and colour the destination of their voyages, and the real property of the vessels in which they trade, and sometimes that of the merchandize too, under the names of *Neutrals*, and have thus incurred the penalty by the very art they used to prevent it, for those who are acquainted with admiralty proceedings know that this colouring, this *mala fides*, in the papers relating to a ship or cargo, operates so strongly that the discovery of it will of itself effect a condemnation when the fair truth, openly avowed in an *undressed state of facts*, would have avoided it. Too much *management*, in a cause naturally generates suspicion: See a pamphlet entitled “An Enquiry upon the subject of capitulations published in Antigua, 1783.

are introduced for the payment of public debts, wherefore they are exempted from them who *only* for a time are subjects to the law of the place. Amongst perpetual subjects, the law of nations excepts only from reprisals, the persons of ambassadors and their baggage when they are not sent to our enemies."

Speaking of a solemn war and its denunciation, he says, " War denounced against a sovereign is presumed at the same time to be denounced not only against all his subjects, but also others who shall join him, and who ought to be considered, in regard to him, only as an accessory." B. 3. c. 3. l. 9.

Afterwards in the chapter which treats of the right of killing enemies in a solemn war, and other hostilities committed against the person of the enemy, he considers how far, and against what description of persons this right extends. His words are, " But this right of licence is of large extent, for it reaches not only those who are actually in arms, and the subject of the prince engaged in war, but also those who reside within his territories, as appears from that form in Livy." Let him and all that live within his country be our enemies. B. 3. Ch. 4. S. 6. 7. 8.

Q

" But

“ But they who went thither before the war, are, by the law of nations, allowed a reasonable time to depart, which if they do not make use of, they are accounted enemies.”

“ That we may not kill or hurt them in a neutral country, proceeds not from any privilege attached to their persons, but from the right of that prince in whose dominions they are, for civil societies may ordain that no violence be offered to any in their territories, but by proceeding in a judicial way.”

Heineccius in his lectures on this chapter of Grotius, has some observations not inapplicable to this subject. —

See Heineccii Praelectiones Academicæ, in Hug. Grot. ch. 4.

See also — Bynkershoek's Question, lib. 2 cap. 3. ad finem De Vattel's Law of Nations vol. 2. c. 5. Huberus de Jure Civitatis, lib. 1. f. 8. c. 7. De Imperiis Involuntariis, and the same Author, lib. 3. f. 4. c. 3. De fœderibus.

The author before cited, in the note, p. 110. lays it down as a principle (which both reason and authority seem to warrant.)

“ That CAPITULANTS, are, during war, NEUTRALS notwithstanding, or rather with the exprefs permission of a residence in the country, and consequently that this quality draws after it all the consequences with respect to their property, which the law of nations has attached to the quality of neutrals and that as such it cannot be lawfully seized as prize of war, by their sovereign * nor by his subjects, so long as their commerce in the nature of its articles, and the destination of its voyage

* The prince to whom they still belong.

is such as is permitted to the subjects of any other the most favoured neutral nation, residing in a neutral island."

SOME VERY EMINENT OPINIONS UPON THE SUBJECT ARE SUB-JOINED, FROM WHICH IT MAY BE INFERRED, THAT IT IS NOT THE NATURE OR DISTINCTION OF A CARGO (SUPPOSING IT NOT COUNTERABAND NOR BOUND TO A PLACE BLOCKED UP) BUT THE QUALITY OF THE PROPRIETOR THAT DECIDES THE FATE OF A VESSEL OR CARGO, EITHER OF WHICH MAY BE PRIZE WITHOUT AFFECTING THE OTHER; AND THAT IF THIS IS THE RIGHT OF FOREIGNERS, BY REASON OF THEIR NEUTRALITY, IT IS EQUALLY THE RIGHT OF CAPITULANTS, WHO HAVE THE SAME QUALITY.

Observations.

The quality of the proprietor fixes the criterion of prize or no prize.

OPINIONS, &c.

Qu. I. **I**S the loading (being sugar, rum, and other commodities, *bona fide* of the growth, produce, and manufacture of the island of *Dominica*, in its present situation) on board of the ship A. commanded by B. C. of *Rotterdam*, (which ship is the property of the subjects of the United-States in amity with his Majesty, and was bound

with such loading from *Dominica*, to the said port of *Rotterdam*) liable to confiscation, or subject to condemnation as lawful prize of war; such ship having been captured by a British cruizer, carried into one of the British plantations, and there libelled in the court of vice-admiralty?

Answer.

Ans. If the facts set forth in the query are clearly made out in evidence, and it shall also appear that the cargo is the absolute and entire property of persons possessed of estates in *Dominica*, at the date of the capitulation, We are of opinion that such cargo is not liable to be condemned as lawful prize of war.

Qu. 2d,

Qu. II. Is the said ship, being the property of the subjects of the United provinces in amity with his Majesty, and which had been *bona fide* employed in carrying necessary and innocent articles of plantation supplies from the ports of *Holland*, to the said Island of *Dominica*, and was actually carrying the produce of *Dominica* from thence to the court of *Rotterdam*, liable to confiscation, or subject to condemnation as lawful prize of war?

Ans.

Ans. The ship, in the case described, is *Answer.*
not liable to condemnation as lawful prize.

WILLIAM WYNNE.

ALX. WEDDERBURN.

May 4th, 1779.

To the preceding Queries, MR. DUN- *Dunning's an-*
NING makes the following Answers. *swer.*

*To the first he says, " Upon the facts
stated, I conceive the cargo of this ship,
which I understand to be British property,
not to be liable to confiscation or condem-
nation."*

*To the second he says; " I apprehend
this ship is not lawful prize."*

Qu. III. The produce of plantations in *Qu. 3d.*
the island of *Dominica*, at a distance from
the principal ports where the ships load for
Europe, is brought in small vessels. employ-
ed for that purpose, (and there called
Droghers, from the bay next to the plan-
tation where it is produced, to such princi-
ple ports to be put on board the ships there
loading for Europe. Therefore, is such
produce, in making the passage described,
in the same situation, and under the same
protection

protection and freedom from capture, as it is in its passage on board a European neutral ship, to an European neutral port ?

Answer.

Ans. " The seventeenth article of the capitulation seems to protect it from capture on the part of France ; and as to capture on the part of England, I see no ground to distinguish the case of a cargo on board one of these coasting vessels from that of the same cargo, if taken in its passage to Europe."

J. DUNNING.

15th May, 1779.

The following is the Report made by the Crown Lawyers on the Saint Vincent Petition.

Report of the
crown lawyers,
&c.

" In humble obedience to his Majesty's commands, &c. &c. we have considered the case, and are of opinion that goods which are actually the growth, produce, and manufacture of the island of *St. Vincent*, are not liable to be seized by British cruizers on board neutral ships, or vessels bound for neutral ports ; and also that such goods on board of Droughers, belonging to the inhabitants of *St. Vincent's* and going

going from one port or bay of the said island to another, are not liable to be seized by the said British cruisers *."

WILLIAM WYNNE.

ALEX. WEDDERBURN.

JAMES WALLACE.

May 10th, 1780.

* Upon the subject of opinions, it is proper to premise the following observations. Giving the full weight of authority, the judgement pronounced is always to be confined to the *particular* case stated. No conclusion can be drawn either way—it cannot be decided, whether the counsel would or would not have given a similar opinion on any other articles; and therefore as there is no other grounds, on the one hand, to say that *other merchandize*, not the produce of the captured island, would have been held in the same light; so, on the other hand, it cannot be concluded that the counsel meant explicitly to exclude such other merchandize from the same exemption. He considers nothing but the instance before him, and his opinion goes no further. The only rule is that, *De iisdem, idem Jus*.—See the book before cited, p. 49.

C H A P. VII.

*Of Slaves—Estates Tail—Dower—
Registering Deeds—Descents—Dis-
tribution of Estates—Conveyances,
&c. &c.*

Slaves, &c.

IN some of the Islands, States, and Pro-
vinces, negroes are considered as *per-
sonal estate*; in others of a *mixed nature*;
and in others again are deemed *real pro-
perty*.

When they are considered as *real estate*,
they must be conveyed by deed, and that
deed must be registered.

Estates tail,
dower, regis-
tering deeds,
&c. &c.

The method of barring *estates tail, dower,
&c.* and *registering deeds*, differing very
materially in the different Islands, States,
and Provinces, it will be necessary for the
practiser to consult their respective law
codes.

State tail.

In most, if not in all, the United-States
words which by the law of England consti-
tute

tute an *estate tail*, are declared by act of assembly to be considered as *fee simple* conditional at common law, and consequently they have neither *fin*es or *recoveries*.

This is the law both in Virginia & New-York.

When any person dies seized of lands, &c. without having devised the same in due form of law, and leaving more than one person lawful issue, or without lawful issue, the inheritance instead of descending to the heir at law, descends as follows in the four following cases.

New-York.

How inheritances descend.

I. In case the person so seized leaves several persons, lawful issue, in the direct line of lineal descent, and all of equal degree of consanguinity, to the person so seized, the inheritance shall descend to the said several persons, as tenants in common, in equal parts, however remote from the person so seized, the common degree of consanguinity may be.

First. When there is lawful issue of equal degree of consanguinity.

II. In case the said person so seized should die, leaving lawful issue of different degrees of consanguinity to him, or her, the said person so seized, the inheritance descends to the lawful immediate children of the said person so seized, as tenants in common, in equal parts; and in case any

Secondly. Where lawful issue of different degrees of consanguinity.

of the said immediate children shall die in the life time of the person so seized, and leave lawful issue, *such issue* shall inherit; if one person solely, and if several persons as tenants in common, in equal parts, the same estate which would have descended to his, her, or their parents, if such parents had survived, so that the estate could agreeable to the rules of descent thereby established, have descended to him or her, and the same law of inheritance and descent is observed in case of the death of the grandchildren, and other descendants in the remotest degree.

Thirdly.
Where without
lawful issue
brothers, &c.
shall inherit.

III. In case the said person so seized shall die with lawful issue, leaving brothers, or a brother or brothers, and sister or sisters of the whole blood, the inheritance shall descend to such brothers, or to such brother or brothers, and sister or sisters, as the case may be, as tenants in common, in equal parts,

Fourthly.
Where ne-
phews, &c.
shall inherit.

IV. In case any such brother or sister shall die, leaving a lawful child or children, and in the life time of the person so seized, such child or children shall inherit; if a child solely, and if children as tenants in common, in equal parts, the same estate
which

which would have descended to his, her, or their father or mother, if such father or mother had survived the said person so seized, and in all cases of descent, not particularly provided for by this act, the common law shall govern.

Provided that nothing herein contained shall be construed to bar or injure the right or estate of a husband, as tenant by the courtesy of England, or the right of dower, which a widow is entitled to.

Provision in favour of a husband or wife.

All posthumous children, in all cases whatsoever, inherit in like manner as if they had been born in the life time of their respective fathers.

Posthumous children how to inherit.

All estates for years, for more than twenty-one years, of or in lands, tenements, hereditaments or real estates whatsoever, whether in possession, reversion, or remainder, by direct and immediate devise or conveyance, or by settlement to use or uses, are (ipso facto) null and void from the beginning, and the estates and interests (so severally and respectively attempted to be disposed of and transferred) descend according to this law, and the common law aforesaid.

How estates for years, for more than twenty-one years, are to descend.

Mode of conveyance.

No estate in joint tenancy in lands, messuages, tenements, or hereditaments, can be held or claimed by or under any grant, devise, or conveyance whatsoever, unless the premises are expressly directed to pass, not in tenancy in common, but in joint tenancy; and every such estate, unless otherwise expressly declared as aforesaid, shall be deemed to be tenancy in common.

C H A P.

C H A P. VIII.

*Of the Method of authenticating
Letters of Attorney—Affidavits,
&c. &c. for the Recovery of Debts,
with Precedents, Practice, &c.—
Method of levying Executions in
Barbadoes, &c. &c.*

ALL affidavits transmitted to the States Affidavit.
or Colonies for the purpose of re-
covering debts, must pursue the direction of
the statute of 5. Geo. II. c. 7.

When a power of attorney is transmitted Power of attor-
ney.
at the same time with an affidavit, they are
both annexed together, and certified under
the common seal of the city or borough,
or town corporate where, or next to which
the person making the affidavit or affirma-
tion happens to reside. Where it is trans-
mitted *without an affidavit*, it may then
either be certified under such common
seal as aforesaid; or it may be executed
in the presence of persons going to the
place

the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the twenty-ninth day of September, which shall be in the year of our Lord one thousand seven hundred and thirty two, in any action or suit then depending or hereafter to be brought in any court of law or equity in any of the said plantations, for or relating to any debt or account wherein any person residing in Great-Britain shall be a party, it shall and may be lawful to and for the plaintiff, or defendant, and also to and for any witness to be examined or made use of in such action or suit, to verify or prove any matter or thing by affidavit or affidavits in writing, upon oath, or in case the person making such affidavit be one of the people called Quakers, then upon his or her solemn affirmation, made

and if the latter are sometimes dubious as to the circumstances of the former, or less acquainted with their persons, they do not fail taking security *here* for their conduct. As these agents and factors are often obliged to give credit to the inhabitants till crop time, so they are allowed to sue as such, for any debts contracted on account of their employers, and which, by the course of the courts, they may at the trial prove by their own oath, being previously sworn that they have no profit or loss in the action but their own commissions, by which means there are no debts more easily recovered than such as are so contracted.

before

before any mayor, or other chief magistrate of the city, borough, or town corporate in Great-Britain, where, or near to which the person making such affidavit or affirmation shall reside, and certified and transmitted under the common seal of such city, borough, or town corporate, or the seal of the office of such mayor, or other chief magistrate, which oath and solemn affirmation every such mayor and chief magistrate shall be, and is hereby authorized and empowered to administer; and every affidavit and affirmation so made, certified, and transmitted, shall, in all such actions or suits, be allowed to be of the same force and effect as if the person or persons, making the same upon oath, or solemn affirmation as aforesaid, had appeared and sworn or affirmed the matters contained in such affidavit or affirmation, *viva voce*, in the open court, or upon a commission issued for the examination of witnesses or of any party in any such action or suit respectively.

Provided that in every such affidavit and affirmation, there shall be expressed the addition of the party making such affidavit or affirmation, and the particular place of his or her abode.

Place of abode,
&c.

S

And

Same power
extended to his
Majesty, &c.

And be it further enacted by the authority aforesaid, That in all suits now depending, or hereafter to be brought in any court of law or equity, by or in behalf of his Majesty, his heirs, and successors, in any of the said plantations, for or relating to any debt or account, that his Majesty, his heirs, and successors, shall and may prove his and their debts and accounts, and examine his or their witnesses or witnesses by affidavit or affirmation, in like manner as any subject or subjects is or are empowered, or may do by this present act.

Penalty on false
oath or affidavit,

Provided always, and it is hereby further enacted, that if any person making such affidavit on oath or solemn affirmation, as aforesaid, shall be guilty of felony, and wilfully swearing or affirming any matter or thing in such affidavit or affirmation, which if the same had been sworn upon an examination in the usual form, would have amounted to wilful and corrupt perjury; every person so offending being thereof lawfully convicted shall incur the same penalties and forfeitures as by the laws and statutes of this realm are provided against persons convicted of lawful and corrupt perjury.

And

And be it further enacted by the authority aforesaid, that from and after the twenty-ninth day of September, one thousand seven hundred and thirty-two *, the houses, lands, negroes, and other

Houses, lands, negroes, &c.

S 2 hereditary

* By this clause two things are observable :

I. That all real estates in the Colonies shall be chargeable with the debts and demands of every kind owing to his Majesty, and his subjects here, and be assets for satisfaction thereof in like manner as real estates are to specialty debts by the law of England.

II: That such estates shall be subject to the like remedies, for seizing, extending, selling, and disposing thereof, towards satisfaction of such demands as personal estates already are in many of the said plantations,

The first is unnecessary, the same thing being more fully established by the laws on the spot.

The second is both inconvenient and impolitic.

By the law of *Barbadoes* no freeholder, (*i. e.*) one possessed of ten acres of land, can be arrested but by being sued in the ordinary way, and judgment obtained against him or any other person.

The chief justice is, (fourteen days after,) to issue a warrant to the marshal or his deputy. In the " First place, to attach any of the cotton, tobacco, ginger, sugar, or indigo, belonging to the defendant, if none such, then the servants, negroes, cattle, horses, or other moveables ; if none, then such of the lands, plantations, or houses of the defendant ; and lastly if none such, then to arrest the person of the defendant, and him in safe custody to keep until he hath satisfied the plaintiff."

This

hereditary and real estates, situate or being within any of the said plantations belonging to any person indebted, shall be liable to, and

This is the substance of the execution, which being prescribed by an early act of the island, has been constantly pursued ever since without variation.

This takes in not only the writs of *fi fa*, and *elegit*, but also the *capias ad satisfaciendum*; and indeed comprehends more than all these put together, because the marshal may, by virtue of this act, sell the whole real estate where there are no effects to be had.

See the case of *Blancard and Goldy*. 4 Mod. 222. Where it is said by the court, that in *Barbadoes* freeholds are subject to debts, and are esteemed as chattles till the creditors are satisfied, and then the lands descend to the heir.

The law is the same in *Antigua*, and in one thousand seven hundred and twenty-three, an act was also passed there for constituting a court, "To hold plea of foreign attachments," according to the custom of the city of London.

By uniform practice in *Barbadoes*, an execution taken out on a judgment obtained against an executor, even on the simple contract of the testator, may be levied on any of his real estates where there are no other effects; and being appraised according to the method directed by the act, and not redeemed within the time thereby limited, the marshal, of course, passes his bill of sale to the plaintiff. This conveys the land or tenement to him and his heirs, who holds the same by a good title in fee simple against all claiming under the defendant or his testator, provided he had such an estate therein at the time of his death; otherwise, according to the estate he had or could have himself conveyed. From whence it will follow, as the fact is, that notwithstanding the statute of the 3 & 4 Wm. & Mary, c. 14. does

and chargeable with all just debts, duties, and demands of what nature or kind soever, owing by any such person to his Majesty or any of his subjects, and shall and may be assessed for the satisfaction thereof in like manner as real estates are by the law of England liable to the satisfaction, of debts due by bond or other specialty, and shall be subject to the like remedies, proceedings, and process, in any court of law or equity in any of the said plantations respectively, for seizing, extending, selling, or disposing of every such houses, lands, negroes, and other hereditaments and real estates, towards the satisfaction of such debts, duties, and demands, and in like manner as personal estates in any of the said plantations respectively, are seized, extended, sold, or disposed of for the satisfaction of debts*.

There

not extend to this island, the debts of the testator have always been satisfied out of his real estate in the hands of his devisee whenever there is a want of personal assets. See 4 Co. 78 a. And all decrees for legacies are in such cases levied thereon, though not expressly charged with payment thereof by will; for decrees of courts of equity are executed like judgments at law with some very slight variation as to the method.

* The reason of this practice, probably proceeded on a supposition that all their estates were in the nature of chattels for the

There is reason to believe that the American citizens rely more on the speedy justice, and impartial administration of justice in Westminster-Hall, than that of their own tribunals.—In this spirit, (says Chalmer's) and the observation is warranted by facts, " They have adopted a practice which leads to unforeseen consequences, and which, were they foreseen, could not be easily prevented, however inconvenient they might be. The American citizens when they see any fellow citizen about to depart to Britain, for the purpose of business, rather than of settlement, and who may be united to them, allow the debtor to depart and arrest him on his arrival in London. In this they have two views. First. They rely on the singular justice of this country. Secondly. They know that their debtor carries with him a large sum of money with design to purchase a considerable cargo, on the credit of what he pays down; and they hope by arresting

the payment of debts, a doctrine set on foot in the infancy of the island for the encouragement of trade.

See a book entitled, Remarks upon several Acts of Parliament and Acts of Assembly, relative to laws in the West-Indies, anno, 1741.

their

their debtor on the Exchange to intercept the money, and thereby procure more speedy payment than if they had stoped him in the American port.

*Precedents of different Forms of Letters
of Attorney.*

AN AFFIDAVIT UNDER THE SEAL OF THE
CITY OF LONDON, FOR THE PURPOSE
OF RECOVERING A DEBT DUE IN ONE
OF THE COLONIES.

TO all to whom these presents shall come, I William Beckford, Esq; lord mayor of the city of London, in pursuance of an act of parliament made and passed in the fifth year of the reign of his late Majesty King Geo. II. entitled, an act for the more easy recovery of debts in his Majesty's plantations and colonies in America, do hereby certify, That on the day of the date hereof, personally came and appeared before me, R. T. (the deponent, named in the affidavit hereunto annexed,) being a person well known and worthy of good credit, and by solemn oath, which the said deponent then took before me upon the
Holy

Holy Evangelists of Almighty God, did solemnly and sincerely declare, testify, and depose to be true, the several matters and things herein mentioned and contained in the said annexed affidavit.

In faith and testimony whereof, I the said lord mayor have caused the seal of the officce of mayor of the said city of London to be hereunto put and affixed, and the several accounts mentioned, referred to in and by the said affidavit to be herunto also annexed, dated in London, 13th June, 1763.

HODGES.

(*Seal of the City of London.*)

London, viz. I. W. (clerk to E. C. and I. M. of London, merchants and partners,) maketh oath, That he lived with the said E. C. and I. M. for three years and upwards; and saith, that the accounts hereunto annexed, entitled W. K's. disbursements, purporting to be an account of the Snow Elizabeth, from St. Christopher's, and the portage bill for the said Snow Elizabeth, from Antigua to London, and also the account hereunto also annexed, entitled, Debtor the owners of the Snow Elizabeth in account with W. K. creditor, is a true extract copy of the same accounts as delivered

in

in and settled and adjusted by the said W. K. and that the sum of *eighty seven pound three shillings and ten pence*, appearing to be the balance of the said last mentioned account was well and truly paid to the said W. K. by the said E. C. and I. M. and that the receipt was duly signed by the said W. K. on the original account, now in the custody of the said C. M.; and this deponent further saith, That he has carefully perused and examined the account hereunto annexed, entitled, Debtor the owners of the Elizabeth, W. K. commander, in account current with C. and M. creditors with the books of account with the said E. C. and I. M. and that the same is a true extract copy of the same letter, taken from the said books, and doth agree therewith.— And this deponent saith, by means of his said employment he knows the several sums of money in the said last account mentioned to be paid to W. S. and the several other persons therein named, and for postage of letters, and such other purposes as therein are specified, were all well and truly paid and disbursed by the said E. C. and I. M. and that he this deponent hath carefully computed and examined the several sums charged in the said annexed account for interest and commission, and that the

T same

same are rightly charged and computed, and are the same as usually charged and allowed in the like cases; and this deponent further saith, That he hath also perused and examined the accounts hereunto annexed, entitled, Debtors N. K. and M. I. B. jun. in account current with C. and M. and that the same is a true and exact copy of the same account taken from the said books, and doth agree therewith.—And this deponent further saith, he knows also that the several sums in the said annexed accounts mentioned to be paid to I. C. and the several other persons therein named, for the purposes therein mentioned, were well and truly paid by the said E. C. and I. M. accordingly; and that he this deponent hath computed and examined the several sums charged in the annexed account for interest and commission, and that the same are rightly computed, and justly charged.—And lastly this deponent saith, That to the best of this deponents knowledge and belief, the said E. C. and I. M. have, in the said two last mentioned accounts, brought to account and given credit for all monies and effects received by the said accounts respectively.

I. W.

Sworn at London, 13th June, 1763, before me,

W. BECKFORD, LORD MAYOR.

LETTER

**LETTER OF ATTORNEY CERTIFIED
BY THE LORD PROVOST OF GLAS-
GOW, UNDER THE COMMON SEAL
OF THE CITY.**

K NOW all men by these presents,
That I J. J. post-master of Glasgow,
and merchant for divers good causes and
valuable considerations, me hereunto mov-
ing have made, constituted, and appointed
by these presents, *do* make, ordain, con-
stitute and appoint C. I. of St. John's, in
Antigua, merchant, my true and lawful at-
torney for me, and in my name, and for
my use, to ask, demand, and sue for, re-
cover and receive, of all and whoever
may be indebted to me in any of the West-
India or American islands belonging to
Great-Britain, France, Spain, Denmark,
or Holland, all such sum or sums of money,
debts, and duties whatsoever, which now
are or may be due and owing to me the
said J. J. by all and whoever are or may
be indebted to me, belonging to the above-
mentioned islands; and to have, use, and
take all lawful ways and means in my name
for the recovery thereof, by attachment,
arrest, distress, or otherwise, and to make

and give acquittances and other discharges in my name, and generally to do and execute in the premises, as fully in every respect as I myself might or could do, being personally present, and to make attornies one or more of them, under him, for the purposes aforesaid, and at his pleasure to revoke the same, hereby ratifying, confirming, and allowing all and whatsoever, my said attorney shall lawfully do or cause to be done therein, by virtue of these presents.

In witness whereof I have hereunto set my hand and seal, this 21st day of September, 1763.

J. J. (1 s)

Signed, sealed, and delivered } I. G.
in the presence of } D. W.

At Glasgow, the 5th October, 1763, in presence of Archibald Ingram, Esq; lord provost and chief magistrate of the said city, one of his Majesty's justices of the peace for the county of Lanark, appeared J. G. of the said city, merchant, who upon his solemn oath, taken by him before the said provost, upon the Holy Evangelists of Almighty God, deposes and says, That he this deponent was present and did see the within J. J. sign, seal, and for his true
and

and genuine *act* and *deed* deliver the letter of attorney within written, upon the day of the date thereof, and that D. W. of the said city, merchant, was also then present; and that the name of J. J. appearing at said letter of attorney as granter thereof, and seal thereto exhibited, is the proper hand-writing and seal of J. J. aforesaid; and that the names J. G. and D. W. also appearing at said letter of attorney, as witnesses thereto, are of the respective proper hand-writings of this deponent and D. W. aforesaid.

In testimony whereof these presents are subscribed by the said deponent, and by the said lord provost, who has caused the common seal of the said city to be hereto affixed, date above.

J. G.

ARCH. INGRAM.

C H A P. IX.

*Of the Powers, Authority, and Duty
of Governors of Provinces *.—Of
Distributions, Granting Probates
and Administration, &c.*

Power of the
Governor, &c.

TH E governor of any provincial establishment has the sole power of convening, adjourning, proroguing, and dissolving the general assembly; he has the custody of the great seal, and, in most of the islands, is sole chancellor.

Barbadoes,
Antigua, &c.

In Barbadoes, Antigua, and Montserrat, the council sit as judges in chancery with the governor, but the process is issued and tested in the name of the governor.

Proceedings
similar to those
in England.

The proceedings are similar to those in

* See the form of a governors and vice admirals commission in Stokes's Colony Constitutions, page 150, and that chapter throughout.

England,

England, as they are also in the United States, except in a few trifling instances, which are varied according to local circumstances.

The governor has the power of granting probates of wills and testaments, and administrations. Granting probates, &c.

In the Leeward Islands there is one governor-general and lieutenant-general of all the islands, and there are lieutenant-governors of the islands of Antigua, Montserrat, Nevis, and St. Christophers. Leeward Islands.

In most of the West-India Islands wills are generally proved, "*per testes*," unless they are absent, and in that case the executor, and some one makes oath before the ordinary, of the testators hand-writing; and the executor swears that the paper produced is the last will and testament of the testator. Proving wills.

Where the witnesses are on the spot, the executor takes no oath, nor does he return any inventory into the secretary's office, but the will and probate are registered.

Where there is no subscribing witness they

they proceed in the same manner as the ecclesiastical courts in England.

Jamaica.

In Jamaica where the subscribing witnesses live at a distance, it is usual to sue out a *dedimus* to empower commissioners to take the affidavit of the subscribing witnesses of the due execution.

How proved
when the go-
vernor is out
of the island.

In the West-Indies where a government consists of many islands and the governor is out of the island, where a will is to be proved, but within the government the president of the island where the will is to be proved, usually takes the probate; but if the testator leaves effects in different islands in the government, then the will is generally proved before the governor in chief, as ordinary of all the islands, and the will is then registered in the island in which the testator died possessed of most property, in the same manner as in England when the deceased has *bona notabilia* in different dioceses, the will must be proved in the prerogative court of the archbishop of Canterbury.

The method of obtaining administration in the West-Indies is by petition to the governor who frequently grants it without citation,

citation, when granted the administrator gives bond with securities in the secretary's office faithfully to administer the effects, and render a true account upon oath; a warrant of appraisement also issues and appraisers make an inventory and valuation of the goods and chattels which is returned into the secretary's office.

Method of obtaining administration.

No letters of administration are now granted until previous notice of application for them is given by public advertisement.

Notice, &c.

Petition

Letters of Administration.

ANTIGUA.—By his Excellency, A. B. Esq;
 Captain-General and Governor,
 &c. &c.

WHEREAS ~~Q~~ D. of the said island
 of Antigua, gentleman, and M.
 his wife, by their petition to me directed;
 have set forth, That E. F. late of the said
 island of Antigua, gentleman, deceased,
 departed this life on the 10th day of August,
 one thousand seven hundred and sixty-eight,
 having first made his last will and testament
nuncupative, and thereby given his real and
 personal estate to the petitioner M. who
 was a sister of the half blood to the said
 E. F. which said will, *nuncupative*, hath
 been duly proved before me,

That the said E. F. not having named
 any person or persons, as executor or exe-
 cutors of his said last will and testament,
 the petitioners were advised that it was ne-
 cessary for them to take out letters of ad-
 ministration of all and singular the goods
 and chattles, rights and credits, which were
 of

of the said E. F. at the time of his death, with his last will and testament annexed, to be granted to the petitioners and the survivor of them, upon their giving the usual security into the secretary's office of the island, faithfully to administer the same.

Administration therefore of all and singular the goods and chattels, rights and credits, which were of the said E. F. at the time of his death, with his will annexed, is hereby granted unto the said C. D. and M. his wife, they having given bond with security in the secretary's office, of this island, faithfully to administer the same according to the law, and to render a just and true account of the administration upon oath, when they shall be thereto lawfully required.

Given under my hand and seal, this
20th June, 1769.

A. B.

Passed the Office.
G. P. Dep. Sec.

Warrant

Warrant of Appraisement.

ANTIGUA.—By his Excellency A. B. Esq;
Captain-General, &c. &c.

THESE are in his Majesty's name to authorize and require you A. B. C. D. E. F. or any three of you, according to the best of your judgments and consciences, to inventory and appraise the goods and chattels of E. F. late of the said island of Antigua, gentleman, deceased; as the same shall be shewn to you by C. D. and M. his wife, administrator and administratrix of all and singular the goods and chattels, rights and credits, which were of E. F. deceased, with his will annexed, and return thereof to make into the secretary's office, of this island, with all convenient speed, which return you are to make, so that you may swear, if thereto lawfully required, that the same is a just and true appraisement, and for your so doing this shall be your warrant.

Given under our hand, &c.

A. B.

Passed the Office.

The

The governor presides in the *court of errors*, (of which he and the council are judges,) to determine all appeals in the nature of *writs of error*, from the superior courts of common law, which are tested in his name, or in case of his absence, in the name of the president and council. Court of errors

In the West-India islands the acts of assembly regulate and direct the mode of proceeding in *appeals of writs of error*. Appeals

The court held by the governor and council, for correcting errors in proceedings in the superior courts of common law, is called the *court of errors*. The writ issues returnable before the governor and council.

An appeal lies from the judgment of the governor and council, and from the decree of the chancery to the King in council under the following restrictions.

No appeal shall be allowed to the governor and council, in any civil case, unless the debt or damages, or the sum or value appealed for, exceeds the sum of *three hundred pounds sterling*, except the matter in question relates to the taking or demanding First.

demanding any duty payable to the King, or to any fee or office, of annual rent, or other such like matter or thing, where the rights in future may be bound; in all which case an appeal lies to the King in council, though the immediate sum or value appealed for be of less value.

Second. That in all cases of fine imposed, no appeal lies to the King in council, except the fines so imposed amount to *two hundred pounds* sterling.

Third. Every such appeal, to the governor and council, must be made within fourteen days after judgment in the court below; and plaintiff in error must give security that he will effectually prosecute his appeal or writ of error, and answer the condemnation money; and also pay such costs and damages as shall be awarded, in case judgment below should be affirmed.

Fourth. No appeal is allowed from the judgment of the governor and council, or upon the decree of the court of chancery to the King in his privy council, unless the debt, damages, or the sum or value, so appealed for exceed the sum of *five hundred pounds* sterling.

ling, except where the matter in question,
&c. be as above.

Such appeal, to the King in council, ^{Fifth;}
must be within fourteen days after the judgment below, and plaintiff in error must give security to prosecute his appeal or writ of error effectually, and also to answer the condemnation money; and to pay such costs and damages as may be awarded, in case of the governors judgment or decree being affirmed.

In the West-Indies, provision is usually made by act of assembly for directing the mode of ascertaining the value of the matter in dispute, and also in what time the writ of error shall be returnable, when a transcript of the record shall be made out, and when errors shall be assigned, and such other incidental matters in the course of the proceedings, about which the King's instructions are silent;—*in the United-States these things are provided for by rule of court.*

On an appeal from the governor and council, or from the decree of the court of chancery, to the King in council, the proceedings are copied fair on large paper,
X by

Method of making up the proceedings.

by the officer who has the custody of the records, which done, the officer who has the custody of them makes an affidavit that they are true copies, and that they have been compared with the original records; the proceedings and affidavit are then annexed together, and the governor puts the great seal to them, in which state they are sent to England.

Commissions,
&c.

11th and 12th
W. 3. c. 7.

The governor is usually named first in the commission issued under the 11th and 12th W. III. c. 7. for the more effectual prevention of piracy, as he usually sits as president; if not, the senior member of the council presides.

Made perpetual
by 2d Geo. 2.
c. 3. f. 7. &c.

The above statute is made perpetual by 6th Geo. I. c. 19. f. 3. and is enforced by 8th Geo. I. c. 24. which last mentioned act is made perpetual by 2d. Geo. II. c. 28. f. 7.

Proceedings ac-
cording to the
civil law.

The proceeding under the statute of 11th and 12th W. III. are, by the 4th sect. of that act, directed to be according to the rules of the civil law, and the rules of the court of admiralty.

By

By the 4th Geo. I. c. 11. entitled, "An act for the further preventing robbery, &c."

And for declaring the law upon some points relating to pirates, it is declared (in the 7th sect.) that all who shall commit any offence for which they ought to be adjudged pirates, felons, or robbers, by the said act of 11th and 12th W. III. c. 7. may be tried and adjudged for every such offence, in the same manner as is directed by the 28th Henry VIII. c. 15. and shall be excluded the benefit of clergy; and by the 9th sect. of the 4th Geo. I. c. 11. that act is extended to America.

Piracy.
4th Geo. 1. c. 11.

The governor is also vice-admiral within his province; in the time of war he issues his warrant to the judge of the court of admiralty to grant commissions to privateers:

Vice-admiral

By the 11th and 12th W. III. c. 12. all crimes and offences committed by any governor, lieutenant governor, or commander in chief of any plantation or colony within his Majesty's dominion, beyond the seas, contrary to the laws of this realm, or in force within their respective governments, shall be heard and determined in the King's Bench, in England, or before such commissioners, and in such county of this realm

12th W. 3. c. 12.
12.
Offences &c.
to be tried in
the King's Bench

as shall be assigned by his Majesty's commission, and by good and lawful men of the same county, and that such punishments shall be inflicted as for offences of the like nature in England.

P R A C T I C E.

Bond and judgment common in the West-Indies.

IN the British West-India islands, as well as in Nova-Scotia, New-Brunswic, and Canada, bonds with a warrant of attorney to confess judgment are very common securities in all money transactions.

Not in the United-States,

In all of the United-States, with which the EDITOR is acquainted, this kind of security is never given, and is even disallowd by positive act of assembly.

The following is the Method of levying Executions in Barbadoes, &c.

Execution in Barbadoes and Antigua, &c.

Executions are taken out merely as a farther security for a debt, and they are levied at any time after the death either of the *Comisor* or *Comisee*, according as the circumstances

circumstances of the parties render it necessary.

Whether this was originally owing to the want of proper form given to the writ at first (which is not returnable at all) or whether the established form of it was not rather designedly given, in order to induce that practice is very questionable, writs of *dower* and *partion* are returnable although of as antient use.

In ANTIGUA the execution is made re-
turnable in thirty days. Antigua.

The known practice is that although the *Conussee* dies anterior to the execution, or it has not been taken out within three years, a *scire facias* is always brought before the judgment can be executed, yet if execution is once duly issued (which with the time when must appear in the clerk's or prothonny's office) if it should afterwards be pocketed for many years by the *Conussee*, he or his representative may, whenever they please, deliver it to the marshal, and it will, of course, be levied preferable to any of a late date.

The

See Cro. Eliz.
181.

1. Leon. 304.

1. Mod. 188.

2. Vent. 218.

The execution directs the marshal to attach the cotton, tobacco, ginger, &c. so that it contains all that, for which there are *three* several executions here. It is in some respects like our *statute staple* or a *recognizance* in the nature of it; and seems, like them, to have been originally intended for the benefit of creditors and the encouragement of trade. The officer's business is to observe the order prescribed therein, and to take care not to invert it, (i. e.) that he does not levy on negroes, cattle, horses, or other moveables (as therein expressed) when there is cotton, tobacco, ginger, ~~sugar~~, or indigo, nor attach lands, plantations, or houses, where there are negroes, &c. nor take the body where there is any real visible estate.

If the execution be levied of chattels of *any kind*, the same must be sold at public auction, as directed by the act which constitutes the execution, and which (*inter alia*) directs,

Direction for
sale.

" That in case the buyer shall be at any time sued for any goods or chattels, which he shall so buy of the marshal or deputy aforesaid, in such auctions, the buyer shall plead the said sale in bar, which shall be
accepted

accepted by the court as a good bar in that action; and of every such sale the marshal or deputy shall make certificate in writing under his hand and seal, which shall be returned and filed in the office of the precinct where the recovery is had."

This is in the nature of a return, and as far as relates to a levy on chattels answers the end, at the same time it suggests the reason why the writ itself is not returned, for the chattels, were, perhaps, all exhausted, part of the debt might remain still unsatisfied, and thereupon as all the real estate is equally liable to the same writ it is necessary the marshal should keep it in his hands.

Reason why the writ is not returnable.

It is to be observed that the law has fixed the execution precisely as is above set forth, so notwithstanding the body, goods, and lands are all liable, yet the *Comisee* cannot take them all at his election but they are always comprised in one.

Observations.

It often happens there are no *personalities* of any sort left, or not sufficient to pay the whole debt, the officer is then to look out for lands, plantations, and houses of defendant, concerning which the law has given very different directions, but such

Where no personalities.

Appraisement.

such as do not leave any room for a want of return of the writ; if real estate be seized, in satisfaction of the execution, there must be an appraisement by neighbouring freeholders on oath, and after putting the party in possession, and a certain time limited for redemption, the marshal executes a bill of sale of so much thereof as will satisfy the debts, whereby the interest is conveyed according to the interest the debtor had therein. This bill of sale reciting the judgments, execution, and proceedings thereon is put on record, and allowed to be a good title against the debtor, and all claiming under him.

In this manner whole plantations are sometimes extended, and under this title generally held.

Where no effects, the person liable.

Where there is neither personal nor real effects to be found, or the debtor refuses to shew any, the marshal in pursuance of his writ takes up the person, which accordingly he does, and carries him to goal, of which he is himself the keeper. On the back of the writ is then signified what he did by virtue thereof, and this is kept in the marshal's office, which is a kind of office of record.

If

If any injustice is done, application is made to the court by motion grounded on affidavit.

Lands are bound by the judgment, and as the lease could not be discharged by a descent on the death of the ancestor, so neither is there any law in being that declares the execution taken out by the *Commissary*, in his life time void. In seventeen hundred and thirty-two, an act passed making executions good for twenty years, whoever lends money in the West-Indies, always takes out execution on his judgment in order to bind the chattels*.

* See a book entitled, "Remarks on several English acts of Parliament relating to the American colonies, and on divers acts of assembly there, &c." 8vo. 1742.

CHAP. X.

*Late judicial Determinations in the
Courts of the United-States, and in
the Courts of Westminster-Hall,
relating to the United-States, &c.
&c.*

PHILADELPHIA.

COMMON PLEAS, 1787.

Anon.

Interest.

THE question was, "Whether interest should be allowed during the war on a bond due from a citizen of America to a British subject?" It was given in charge to the jury, by the chief justice, that upon accounts which only carried interest in time of peace, the circumstances of the war were sufficient to destroy the usage and interest upon bonds and obligations bearing interest, from the nature of the contract the interest should cease from the invasion of the British, and

and be revived at the date of signing the preliminary articles.

A similar determination took place in Virginia, and this opinion determined many actions depending in these and other states upon the same point.

Anon.

SAME COURT.

In the same court judgment was given Bill of exchange
in an action brought by the indorsee against the acceptor of a bill of exchange, in which the words "*Or Order*" were omitted, and in which after much investigation, the judges were of opinion that such bill was not negotiable, and consequently that the action could not be supported.

Goodman ver. Januen.

SAME COURT.

IN this case it was established as a principle that where there are subscribing witnesses to a note of hand, it is necessary, (as in the case of a deed,) to produce them at the trial, or to give some satisfactory reason for their absence; but if there are no witnesses, then proof of the parties hand-writing, Witness,

ing, by an indifferent person, (capable of such proof) is sufficient.

This determination seems to deserve the attention of mercantile people, as the obtaining witnesses to promissory notes has commonly been considered a matter of useful precaution; but by this determination it may be productive of much difficulty and embarrassment.

Stoddard

Stoddard ver. Penhallow.

IN seventeen hundred and seventy-seven Captured vessels.
 a vessel belonging to a citizen of Connecticut, bound from England to Nova-Scotia, was taken by a citizen of New-Hampshire, and condemned in the *Inferior Court of Admiralty* as a legal prize. Upon an appeal to the *Superior Court of Admiralty*, for that state, the decree below was affirmed, but the cause being removed into the *Court of Errors and Appeals* for the United-States, the proceedings were reversed, and a decree given in favour of the appellant. After this an action was brought in a common law court of Massachusetts, to recover damages from the captors, but that court would not allow the decree of the *Court of Error and Appeals* for the United-States to be read in evidence, and the plaintiff was therefore obliged to discontinue his action. The question was revived in Pennsylvania upon an attachment which had been laid upon the property of the captors in this state. Defendant now moved to set aside the attachment, upon the following objections.

I. That

be restored, but also such damages given for his use, as might appear just and reasonable. The counsel on the other side contended that if Mr. Slann was obliged to surrender the horse at all, it would be one of the hardest cases ever known; that an equitable price had been given to major Moore, was not denied.—The only ground then on which the plaintiff's plea could be established, would arise from the right in the major's antecedent and subsequent contract.—In time of war, military government was necessarily established. The council of war decided upon all cases relative to military operations ultimately; and general orders had been issued, previous to the capture of colonel Hill's horse, which compleatly authorized the deserter to dispose of him in the best manner he could.

This fact was established by the evidence of *general Pinkney*, who also said, while *general Green* was in command a vast number of recaptures were made from the enemy originally the property of American citizens; and that the governor and council for the time being made application for a line of discrimination to be drawn with regard to such property as might belong to persons hostile to Americans, and such as were friendly

friendly, in pursuance of which general *Green* called a council of general officers and lieutenant-colonels, in which the matter was fully debated. The general opinion was, that such appeared to be the situation of affairs that every possible encouragement ought to be given to what might tend to the annoyance and injury of the enemy. Orders were therefore drawn up which confirmed the current practice, and promised to all degrees of persons protection, not only with regard to person, but also assurances that whatever they brought in should be under their *sole controul*. The honourable witness differed in opinion from the board, and gave his reasons much at length. General *Green* desired he would draw up his thoughts in writing, which he did, and signed his name; this paper was transmitted to congress, attended with such observations as general *Green* thought proper to make. congress took the matter up and came to a resolution that only a fourth salvage should be allowed in cases of recaptured property belonging to suffering citizens.

The counsel for the defendant continued to argue that the utmost veneration ought to be paid to orders from head quarters. That the resolutions of congress did not by any means

fit the present case; it was far from being large enough to include horses; but even if it did, how could Mr. *Slann* obtain a fourth salvage? Not from the present action, for the jury were not competent to make such satisfaction. That this infringement on the law of nations was pregnant with various consequences, and would deaden, if not destroy military ardour.

After putting this position in different points of view the judge informed the jury, That, agreeable to evidence they must find for the plaintiff, they agreed with him on the point of law. The law of nations was the law of arms, and in other parts of the world was allowed full force and operation when one country carried war into another; but in this country he thought the law of nations could not be set up in defence against a resolve of congress; if there was a difficulty it must be whether the resolution extended to horses, of this they were to judge. With regard to recovering a salvage, to him the difficulty did not appear so great; two jurors being drawn could readily ascertain the sum, and it was hardly probable the plaintiff would refuse to comply with their determination.

The jury found a shilling damages for the plaintiff, which entitled him to the horse and the defendant to a fourth salvage.

PENNSYLVANIA.

SUPREME COURT.

*Sarah Green and William Pollan, against
the Executors of David Shaffer.*

THE plaintiff's made a lease by indenture, dated March the first, one thousand seven hundred and seventy-three; of a sugar house, &c. to John William Hoffman, and his assigns for five years, at *seventy pounds* per annum, payable quarterly. The lessee covenanted for himself, his executors, administrators, and assigns, to keep the demised premises in good repair, and to deliver them up at the end of the term in such good repair to the plaintiff's, &c. John William Hoffman assigned the lease to David Shaffer, the original defendant, who entered into the premises. The breach alledged was, that the defendant had not paid *thirty-five pounds* rent, in arrear for the last half year, nor delivered up the premises at the end of the term in good order and repair on the first

of March, one thousand seven hundred and seventy-eight; but that the roof, window-shutters, floors, &c. of the sugar-house were in decay, destroyed, &c.

The defendant pleaded due performance of covenants, payment, and the following special plea; that an alien enemy, viz. The British army, commanded by general Sir William Howe, on the first of May, one thousand seven hundred and seventy-seven, had invaded the city of Philadelphia, taken possession of the premises and held the same until the end of the term and afterwards; and had during that period committed the waste and destruction stated by plaintiff in his declaration.

The plaintiff demurred generally to the last plea, and defendant joined in demurrer.

The demurrer was argued on the twenty-seventh of June, one thousand seven hundred and eighty-six, by *Messrs. Coxe, Lewis, and Wilson*, for the plaintiff's; and *Messrs. Ingersol, Wilcocks, and Sergeant* for the defendant, before the *chief justice* and *judge Bryan*; and afterwards by the same councli before the *chief justice*, judges *Atley* and *Bryan*, (judge *Rush* declining to hear the same,

same, having been of council with the plaintiff's.)

Two questions were made :

First.—Whether the defendant as assignee of the lease was bound by the covenant to repair as well as the lessee.

Second.—Whether the special matter pleaded was sufficient in law to bar the plaintiff's right in demand ?

On the sixth of October, one thousand seven hundred and eighty-seven, the *chief justice* delivered the judgment of the court.

With respect to the first question, we are clear, in our opinion, that the covenant to repair, and to deliver the demised premises in good order and repair, runs with the land being annexed and appurtenant to the thing demised, and binds the assignee as much as the lessee, even if the assignee were not named by express words, on account of the privity; but in the case at bar, the assignee is bound by express words, and (*a fortiori*) is answerable as well as the lessee. This point has been fully stated in *Spencer's case*. 5. Co. 16. b. and 1 Salk. 199. Lev. 206.

See

See 1. Rolls abr. title (*covenant*) letter M. pl. 1. and N. pl. 2.—Vin. abr. 6 vol. p. 411. letter M. pl. 1. 2.—Bacon's abr. 543. ca. 5. and the books cited in these abridgements.

The second question is of great difficulty, and of great importance. We cannot find that it has ever come directly before any court in England, or in any part of Europe. We wish that it had come before abler judges than we pretend to be. However, we must give our judgment, but we do it with more diffidence than has occurred in any case, since we have had the honour to sit here.

As there is no positive law, no adjudged case, no established rule or order, to direct the court in this point, we must be guided by the principles of law, by conscience, that infallible monitor within every judge's breast, and the original and eternal rules of justice; for equity is part of the laws of Pennsylvania. See 1. Chan. ca. 141.—Grounds and rudiments of law and equity, p. 74. ca. 104. Doct. and Stud. 1. cap. 16.

It is agreed, that if a house be destroyed by lightening, floods, tempests, or enemies, without any concurrence of the lessee, or possibility

possibility of his preventing the same, this is no waste in the lessee: for it is not done by the lessee's negligence, or any wilful act of his; and he cannot be charged with using it improperly, and it would thus have perished, even in the reversioners possession.

1 Inst. 53 b. Landlord's law, page 158, 278, 286.—Fitzherbert's *natura brevium*, (*waste*) 132, 1st edition Kelw. 87.

It is also agreed, that where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and hath no remedy over, there he shall be excused. As in the cases of waste against tenants in dower, by the courtesy for life, or years, of common carriers, innkeepers, &c.—of lessees by parole, &c. or of a lessor during a war. Aleyn 27.—4 co. 84 b. *Southeote's case* and other books.—2 Leon. 189.

But it is contended for the plaintiffs, that the defendant is obliged to pay the *rent*, and yield up the tenement in good order and repair, because of the express covenant; and in support of this doctrine have been cited, *Doctor and Student*. Dialogue 2. chap. 4. page 124. Aleyn 27.—Stile
47.

47. 1 Rolls abr. 939. S. C. Comyns, Rep. 631, 632.—2 Stra. 763.—1 Vent. 185.—Plow. 290.—Perkin's, 738.—Brook title (*covenant*) Pl. 4,—Title *waste*, 19, 31.—2 Leon, 189.—Dyer. 33. Pl. 10. 2 Saunder's, 420.—2 Vern. 280.

On the part of the defendant, it is insisted, that the express covenant in this case does not bind against acts of God or of enemies, but only against other covenants. Because such acts were not in the contemplation of either party at the time of the lease being executed. A risk known and insured, ought to be complied with agreeable to bargain. Every contract ought to be construed according to the intention of the parties; and, in the present case, the defendant had only covenanted to keep the premises in repair, &c. against *ordinary incidents* and not against a case which he could by no means possibly prevent.

That if the law were otherwise, in England yet relief would be had in a court of *Chancery*; and that as no action had ever been brought in any case circumstanced as this is, an argument is furnished, that no such action will lie.

In

In support of this opinion were cited, lord Raym. 909.—Bacon, abridg. 369, 370.—1 Rolls, abr. 236.—Dyer, 56, pl. 15.—1 Blackst. 153, 157.—Cowper, 9, 600.—Douglass, 190.—1 Comyns Digest, 150.—Co. Litt. 206. a.—1 Brown's parl. cases, 526, p. 528.—15. Vin. abr. 474. pl. 1.—3. Chan. rep. 44, 79.—3 Burrows, 1249. 1240, 1637.—Dyer, 33, 10.—Sir Thomas Raymond, 464.—1 Co. 98. *Shelley's case*.—6 Vin. p. 407. ca. 1. 3.—1 cha. ca. 72, 83, 84, 190.

The books have been thoroughly searched on this head, and the question handled with great ability on both sides. In short little more could be said or done for either party, than what has been said and done:

In deciding this intricate and difficult case, it will be of use to state the different powers of the common law courts, and the court of chancery in England, at the time of the revolution.

The courts of law, *there* are governed by general and established rules, from which they never deviate in any case, be the injustice arising from them ever so apparent,

A a

they

they are bound by their oaths to observe the strict rules of the law.

A court of *Chancery* judges of every case according to the peculiar circumstances attending it; and is bound not to suffer an act of injustice to prevail: and in doing this it conforms to the spirit and interest of the general rule of every positive law, which always admits of *particular* exceptions.—This is tacitly understood. The jurisdiction and bounds of these two (kinds of) courts are fixed.

In this state the judges are sworn “To do equal right and justice to all men, to the best of their judgment and abilities according to law.” There is no court of chancery. Here the judges are, nevertheless, to determine causes according to equity, as well as positive law—equity being a part of the law. Doctor and Student, lib. 1. chap. 16. 1 chan. Cases, 141.—Grounds of law and equity, 74. ca. 104. Indeed common law is common right, common reason, and common justice. Wood’s inst. 4.

Was this point brought before a court of common law in England, at this day, I have doubts with respect to what would be their

their determination. For, it is laid down for law, "That if a lessee covenanted to leave a wood in as good plight as the wood was in at the time of the lease, and afterwards the trees were overturned by tempest, he is discharged of his covenant, *quia impotentia excusat legem*." 1 Co. 98 b. now, in that case, there was an express covenant: and although it was impossible to restore the trees in the same plight they were in, yet he might plant new ones, or render damages in lieu of them, the same law is laid down in Brook's *title covenant* pl. 4. then was it not equally impossible for the defendant to deliver the possession of the premises, in good repair, to the plaintiff, on the first of March, 1778, when they were held by an hostile army.

In *Vaughan's Reports*, in the case of *Hayes ver. Bickerstaff*, page 122, it is held "That a man's covenant shall not be strained so as to be unreasonable, or that it was improbable to be so intended, without necessary words to make it such; for it is unreasonable to suppose that a man should covenant against the tortious acts of strangers, impossible for him to prevent, or probably to attempt preventing." This was an action brought by the lessee against the lessor,

for, on his covenant, for quiet enjoyment. In page 199, it is said, that if the lessor covenants that the lessee shall hold and enjoy his term, without the entry or interruption of any, whether such entry or interruption be lawful or tortious, there the lessor should be charged, because no other meaning can be given to this covenant. In the case before the court, if the lessee had covenanted for himself and assigns, to deliver up the tenaments in good order and repair, notwithstanding they should be destroyed by act of God or an enemy, then this action would certainly lie, because of the special and express words; but when there are no such words, but only generally *to repair, &c.* would it be reasonable to construe these words so as to extend to the cases put? Cannot the covenant in this case have another meaning? Can it not be construed, that the tenaments should be kept in good repair, and in such order delivered up at the end of the term, without any act or default of him, or act of any person, who could be prosecuted as a wrong doer, to prevent it?

However, perhaps, the common law courts in England might think they were bound, by the strict rules of law, on account

count of the general express covenant, to determine against the defendant, and that his relief must be in *Chancery*, if any where, because of the established rules and boundaries of the jurisdiction of these courts.— We must, then, consider the equity of this case, and determine upon all the circumstances thereof; for although we have not the chancery forms or methods of carrying several equitable cases into execution, yet we are to determine (*where we may*) according to equity, as making a part of the law—to prevent a failure in justice.

And here we have no precedents in chancery in point: but the case of the office which was taken away by the usurpers in the civil war in England, *reported in the 1. ch. ca. 72.*—That of the rent of a house, which was seized by the parliament, during the said war, for an hospital for soldiers, *in the same book, 84,* which appears to have been taken under advertisement, by the chancellor, with a declaration, that if ~~he~~ he could he would relieve the tenant; but it was afterwards probably compromised, as we can find no more of it.

That of the recognizance for payment of ~~ten thousand pounds,~~ to legatees by an executor,

cutor, where the testator's estate was so lessened by the fire of London, that it became insufficient to make up the sum.—Same book, 190.—And that of a fee given with an apprentice, where *one hundred and twenty pounds* was given; and it was provided by articles expressly, that if the master died within a year, *sixty pounds* were to be returned;—he died in three weeks after the execution of the articles.—And though the parties themselves had provided against accidents—and though the maxim, “*Modus et conventio vincit legem*,” was urged, yet *one hundred guineas* were decreed to be paid back, 1 Vern. 460.

I say, these cases, and the uncontradicted assertion of Mr. *Dunning*, that the case of *Paradine ver. Jane*, had been overruled in chancery, (see 3 Burr. 1639.)—and also some others which have been quoted by the defendant's counsel, hold a doctrine that is strongly in favour of the defendant.

In Doctor and Student, dialogue 2. ch. 4. p. 126. Mr. German is puzzled to give a satisfactory reason to the question put by the doctor, (*to wit*,) “If a man under age marries, and lands afterwards descend

descend to the wife, and waste is committed therein after her death, without the concurrence or default of the husband, shall he be charged with it?" The case thus stated, shows that he could not refuse taking such estate, and therefore the charge or condition annexed to it by law is unreasonable and unjust. He makes the Student answer it in this manner, "That there is as great fault in him, as in him in the reversion; and that there is as great reason why he should be charged with the waste, as that he in reversion should be disinherited, and have no manner of remedy, or get no profit of the land which the other hath."

But I conceive, *as there was no default in either of them*, that there is more reason that each of them should bear his own share of the loss, according to the duration of his estate, than that the one should be responsible to the other. The maxims, "*Lex non cogit impossibilia*." "*Impotentia excusat legem*". "Constructions are to be with equity and moderation, to moderate the rigour of the law." *Grounds, &c.* 38.—*ca.* 49.—apply to the present case.

If

If a lessor covenants that the lessee shall quietly enjoy against all men, yet in case he is ousted by an enemy, or tortiously entered upon by strangers, no action of covenant can be maintained against the lessor, notwithstanding the express general covenant. *Vaughan*, 119. &c. This the counsel for the Plaintiffs agree to be the law.

Why, then, should the law make the lessee answerable on such a general express covenant, to surrender the demised premises in good repair, when they were destroyed by an hostile army? Ought not the two covenants to receive the like favourable and reasonable construction? "Remedies are to be reciprocal." "When the construction of any thing is left to the law, the law which abhorreth injury and wrong, will never so construe it, that it shall work a wrong." *Grounds*, &c. 368.

To conclude. My opinion is, that the defendant ought to pay the rent. First, because of the express covenant to pay it: Second, because it is a sum certain, and the extent of the loss known, and as he was to have the advantage of *casual* profits, he ought to run the hazard of *casual* losses during

during the term, and not lay the whole burden of them upon the lessors, as resolved in *Alleyn, 27*. Third, because if a tenant by elegit be interrupted taking the profits of the land by reason of war, he shall not hold over, but shall sustain the disadvantage, as resolved in *4. Co. 81. b.* *Sir Andrew Corbit's case.*

But I am of opinion, the defendant is excused from his covenant to deliver up the premises in good repair on the first of March, 1778.—First, because a covenant to do this, against an act of God, or of an enemy, ought to be special and express, and so clear that no other meaning could be put upon it.

II. Because the defendant had no consideration nor premium for this risque; and it was not in the contemplation of either party. And lastly, because "equality is equity;" and the loss should be divided; he who hath the term will loose the temporary profits of the premises; and he who hath the reversion will bear the loss done to the permanent buildings. Neither party has been guilty of any default; the injury has been done by a common enemy, whom both together could not possibly resist or

prevent; and the premises would have been thus damnified in the possession of the plaintiff himself. Suppose when the lease was executed, that the lessee had asked, is it your meaning, that in case the buildings should be destroyed by an act of God, or public enemies, you are to rebuild or repair them? His answer would have been unquestionably, "No;—I never entertained such an idea." Should the like question have been put to the lessor, his answer would certainly have been, "No;—I do not expect any thing so unreasonable." If there is no case in point in favour of this determination, there is none against it; and since no action of this kind has been brought, a presumption arises, that the sense of mankind is against it. If, however, we should be thought mistaken, another hearing may be had before the high court of errors and appeals, on a writ of error, where this new case may be finally settled.

NEW-

N E W - Y O R K.

COMMON PLEAS, 1787.

Anon.

ONE of two partners in trade became insolvent and a separate commission of bankruptcy was taken out against him; the other partner being, during the whole transaction, in good and solvent circumstances. On this case the question was, Whether the commissioners under the separate commission were entitled to receive and distribute the joint stock of the partners, or whether the solvent partner was entitled to retain and appropriate it to the use of the company? It was admitted by the council, and declared by the court as an undoubted *axiom* that joint estate is first responsible to separate creditors; but it seems on this occasion the commissioners claimed all the interest of the insolvent partner in the joint estate, though they were entitled to make the distribution. While the solvent partner contended that as he was personally answerable for the company's debts, he ought to possess the fund out of which those debts were payable. The apparent equity of the

case, in favour of the latter position, gave occasion to a remark from the court, That the execution of the bankrupt law must be extremely defective till a controuling jurisdiction similar to the chancellor's in England was here established, since it was left generally to the commissioners to proceed as they pleased; and upon an appeal to the common law, the courts were bound by general rules which might in particular cases militate against justice and natural equity. The forms of instituting an action created some difficulty in the present instance, and it was acknowledged by the council that the most diligent search had not enabled them to discover a precedent for ascertaining who ought to be made parties to the suit to recover the partnership debts.

This silence in the law evidently proceeds from the interposition of the chancellor, who directs in every respect the proceedings under the commission, upon full consideration of all the circumstances of the case.—N. B. left undetermined.

C H A P. XI.

Constitution.—Treaty of Peace, &c.

THE NEW CONSTITUTION having been adopted by the states, subject to a declaration of rights asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people; among which are, " Liberty of conscience—freedom of the press—and trial by jury," and subject to a recommendation of amendment of some exceptionable parts to congress. A copy of it is here added as forming THE MAGNA CHARTA OF NORTH AMERICA—as is, a copy of the late " TREATY OF PEACE," many judicial questions arising out of it between England and America.

C O N S T I T U T I O N .

WE the people of the United-States in Preamble.
order to form a more perfect union, establish
justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain

ordain and establish this constitution for the
United-States of America.

A R T I C L E I.

Art. 1. sect. 1.

All legislative
power vested in
congress.

All legislative powers herein granted
shall be vested in a congress of the United-
States. which shall consist of a senate and
house of representatives.

Sect. 2.

Representa-
tives, &c.

The house of representatives shall be
composed of members chosen every second
year by the people of the several states,
and the electors in each state shall have the
qualifications requisite for electors of the
most numerous branch of the state legis-
lature.

Electors, &c.

Representative,
qualification,
&c.

No person shall be a representative who
shall not have attained to the age of twenty-
five years, and been seven years a citizen
of the United-States, and who shall not,
when elected, be an inhabitant of that state
in which he shall be chosen.

Representa-
tives and taxes
apportioned,
&c.

Representatives and direct taxes shall be
apportioned among the several states which
may be included within this union, ac-
cording to their respective numbers, which
shall be determined by adding to the whole
number

number of free persons, including those bound to service for a term of years; and excluding Indians not taxed. Three-fifths of all persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United-States; and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty-thousand, but each state shall have at least one representative, and, until such enumeration shall be made, the state of Hampshire shall be entitled to choose three, Massachusetts eight; Rhode-Island and Providence Plantations, one; Connecticut, five; New-York, six; New-Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North-Carolina, five; South-Carolina, five; and Georgia, three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. Vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment. Speaker, &c.
Impeachment.

The

Senate.

The senate of the United-States shall be composed of two senators from each state, chosen by the legislature thereof for six years, and each senator shall have one vote.

**Division into
classes, &c.**

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes; the seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if

Vacancies.

vacancies happen by resignation or otherwise, during the recess of the legislature, of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

**Senatorial qua-
lifications.**

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United-States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The

The vice-president of the United-States <sup>Vice president,
&c.</sup> shall be president of the senate, but shall have no vote unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore* in the absence of the vice-president, or when he shall exercise the office or president of the United-States.

The senate shall have the sole power to try all impeachments when sitting for that purpose ; they shall be on oath or affirmation. When the president of the United-States is tried the chief justice shall preside ; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall <sup>Impeachment,
&c.</sup> not extend further than to removal from office and disqualification to hold and enjoy any office of honour, trust, or profit, under the United-States but the party convicted, shall, never theless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sec. 4. The times, places, and man- ^{Sec. 4.}
C c ner

Elections.

ner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law make or alter such regulations, except as to the places of choosing senators.

Congress.

The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 5.
Each house
judge of their
own election,
&c.

Sec. 5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner, and under such penalties as each house may provide.

Adjournment,
&c.

Rules, &c.

Each house may determine the rules of its proceedings, punish its members for disorderly behaviour and with the concurrence of two-thirds expel a member.

Journal, &c.

Each house shall keep a journal of its proceedings and from time to time publish the same, excepting such parts as may in
their

their judgment require secrecy, and the yeas and nays of the members of either house, on any question, shall at the desire of one-fifth of those present, be entered on the journal.

Neither house during the session of congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment
&c.

Sec. 6. The senators and representatives shall receive a compensation for their services to be ascertained by law, and paid out of the treasury of the United-States. They shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses ; and in going to and returning from the same, and for any speech or debate in either house they shall not be questioned in any other place.

Sec. 6,
Fees and pri-
vileges, &c.

No senator or representative shall during the time for which he was elected, be appointed to any civil office under the authority of the United-States, which shall have been created, or the emoluments

Disqualifica-
tion of senators
and represen-
tatives.

increased during such time, and no person holding any office under the United-States, shall be a member of either house during his continuance in office.

Sec. 7.
~~Money~~ bill.

Sec. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Mode of passing bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United-States, if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it, if after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections to the other house, by which it shall likewise be reconsidered, and if approved of by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by *yeas* and *nays*, and the names of the persons voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall
not

not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United-States, and before the same shall take effect shall be approved by him, or being disapproved, shall be repassed by two-thirds of the senate and house of representatives according to the rules and limitations prescribed in case of a bill.

Orders, resolutions, votes, &c.

Sec. 8. The congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts, and provide for the common defence and general welfare of the United-States; but all duties, imposts, and excises shall be uniform throughout the United-States.

Sec. 8.
Taxes, duties, imposts, & excise, &c.

To borrow money on the credit of the United-States.

Borrowing money.

To

Commerce.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

**Naturalization,
Bankruptcies,
&c.**

To establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United-States.

Coin.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

criminal laws.

To provide for the punishment of counterfeiting the securities and current coin of the United-States.

**Post-offices and
roads.**

To establish post-offices and post-roads.

**Arts and
sciences, literary
property,
&c.**

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right of their respective writings and discoveries.

**Inferior tribunals,
&c.**

To constitute tribunals inferior to the supreme court.

**Piracies and
felonies**

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

War, letter of
marque, &c.

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

Armies, &c.

To provide and maintain a navy.

Navy.

To make rules for the government and regulation of the land and naval forces.

Land and sea
forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

Militia, insur-
rections, invasi-
ons, &c.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United-States, reserving to the states respectively the appointment of the officers and authority of training the militia according to the discipline prescribed by congress.

Militia, &c.

To exercise exclusive legislation in all cases whatever, over such district, not exceeding ten miles square, as may by cession of particular states and the acceptance of congress

Exclusive jurif-
diction.

Congress become the seat of government of the United-States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.—And,

Laws, &c.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested by this constitution in the government of the United-States or in any department or office thereof.

Sec. 9.
Migration and
emigration,

Sec. 9. The migration or importation of such persons as any of the states, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand seven hundred and eighty-eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas Corpus.

The privilege of the writ of *Habeas Corpus* shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

No

No bill of attainder, or, *Ex post facto* Attainder.
Law shall be passed.

No capitation or other direct tax shall Taxes.
be laid unless in proportion to the *census*
or enumeration herein before directed to
be taken.

No tax or duty shall be laid on articles
exported from any state.

No preference shall be given by any Commercial
regulations,
&c.
regulations of commerce or revenue to the
ports of one state over those of another;
nor shall vessels bound to or from one
state be obliged to enter, clear, or pay
duties in another.

No money shall be drawn from the trea- Treasury, ac-
counts, &c.
sury but in consequence of appropriations
made by law; and a regular statement and
account of the receipts and expenditures
of public money shall be published from
time to time.

No title of nobility shall be granted by Titles,
the United-States, and no person holding
any office of profit or trust under them,
shall, without the consent of congress, accept
of any present, emolument, office, or title

D d

of

of any kind whatever, from any king, prince, or foreign state.

Sec. 10.
Treaties, alli-
ances, &c. &c.

Sec. 10. No state shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, remit bills of credit, make any thing but gold and silver coin, a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligations of contracts or grant any title of nobility.

Duties, &c. &c.
under controul
of congress.

No state shall, without the consent of congress, lay any imports, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the nett produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United-States; and all such laws shall be subject to the revision and controul of congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war unless actually invaded, or in such eminent danger as will not admit of delay.

A R T I-

ARTICLE II.

Sec. 1. The executive power shall be Sec. 1. President, &c. vested in a president of the United-States of America; he shall hold his office during the term of four years, and together with the vice president, chosen for the same term, be elected as follows :

Each state shall appoint, in such manner Electors, &c. as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in congress. But no senator or representative, or person holding an office of trust or profit under the United-States shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each list, which they shall sign and certify, and transmit sealed to the seat of

the government of the United-States, directed to the president of the senate.

President. &c.

The president of the senate shall in presence of the senate and house of representatives open all the certificates, and the votes shall then be counted.

Votes, &c.

The person having the greatest number of votes shall be president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president, and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose a president. But in choosing the president the votes shall be taken by the states, the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president the person having the greatest number of votes of the electors shall be *vice-president*; but if there shall remain two or more who have
equal

equal votes, the senate shall choose from them by ballot the *vice-president*.

The congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United-States. Congress, &c.

No person, except a natural-born citizen of the United-States at the time of the adoption of this constitution, shall be eligible to the office of president, neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United-States. President.

In case of the removal of a president from office, or his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president and the congress may by law provide for the case of removal, death, resignation, or inability, both the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly until the disability be removed or a president shall be elected. In case of inability the office devolves on the vice president.

The

Salary, &c.

The president shall at stated times receive for his services a compensation which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United-States or any of them.

Oath, &c.

Before he enter on the execution of his office he shall take the following oath or information, “ I do solemnly swear, (or affirm,) that I will faithfully execute the office of president of the United-States, and will, to the utmost of my ability, preserve, protect, and defend the constitution of the United-States.

Sec. 2.
Commander in
chief, &c.

Sec. 2. The president shall be commander in chief of the army and navy of the United-States, and of the militia of the several states, when called into the actual service of the United-States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United-States, except in cases of impeachment.

He

He shall have power, by and with the advice and consent of the senate to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United-States whose appointments are not herein otherwise provided for, and which shall be established by law, but the congress may by law vest the appointment of such inferior officers as they may think proper, in the president alone, in the courts of law or in the heads of department.

Power to make treaties.

Appoint Ambassadors, &c.

The president shall have power to fill up the vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

To fill up vacancies, &c.

Sec. 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses or either of them, and in cases of disagreement between them with respect to the time of adjournment,

His duties.

Adjournment,
&c.

ment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United-States.

Removal on
conviction, &c.

Sec. 4. The president, vice-president, and all civil officers of the United-States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

A R T I C L E III.

Judicial powers vested in
courts appointed
by congress.

Sec. 1. The judicial power of the United-States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Extent of jurisdiction.

Sec. 2. The judicial power shall extend to all cases in law and equity arising under this constitution; the laws of the United-States
and

and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United-States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state or the citizens thereof and foreign states, citizens, or subjects.

Treaties.
Ambassadors.
Admiralty,
State contro-
versies, &c.

In cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have *original* jurisdiction. In all other cases, before-mentioned, the supreme court shall have *appellate* jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress shall make.

Consuls and
other public
ministers.

Where original
jurisdiction and
where appel-
late.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the

Trial by jury,
&c. of all
crimes except
impeachment,
treason, &c.

E c

trial

trial shall be at such place or places as the congress may by law have directed.

Sec. 3.
Treason, &c

Sec. 3. Treason against the United-States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

Article 4.

A R T I C L E IV.

Sec. 1.
Records, &c.

Sec. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state; and the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effects thereof.

Rights of citi-
zenship, &c.

Sec. 2. The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.

A person

A person charged in any state with treason, felony, or other crime, who shall flee from justice and be found in another state, shall on demand of the executive authority of the state, from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

No person held to service or labour, in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party, to whom such service or labour may be due.

Sec. 3. New states may be admitted by the congress into this union, but no new state shall be formed or erected, within the jurisdiction of any other state, nor any other state be formed, by the junction of two or more states, or parts of states, without the consent of the legislature of the states concerned as well as of congress.

The congress shall have power, to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United-States;

States; and nothing in this constitution, shall be so construed, so as to prejudice any claims of the United-States, or any particular state.

Sec. 4.

Republican government, &c.

Sec. 4. The United-States shall guarantee to every state, in this union, a republican form of government, and shall protect each of them against invasion, or on the application of the legislature, or of the executive, when the legislature cannot be convened, against domestic violence.

A R T I C L E V.

Amendments
of the constitution,
&c.

The congress, whenever two-thirds of both houses, shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislature; of two-thirds of the several states, shall call a convention for proposing amendments which in either case shall be valid to all intents and purposes, as a part thereof, when ratified by the legislatures, of three-fourths of the several states or by conventions, in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress, provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first

first and fourth clauses, in the ninth section of the first article ; and that no state without its consent, shall be deprived of its equal suffrage in the senate.

A R T I C L E VI.

All debts contracted and engagements Debts, &c. entered into before the adoption of the constitution, shall be as valid against the United-States under this constitution as under the confederation.

This constitution and the laws of the United-States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United-States, shall be the supreme law of the land ; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. This constitution, treaties, &c., and the law of the land.

The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial offices, both of the United-States and of the several states, shall be bound by oath or affirmation to support this constitution, but no religious test shall ever be required Senators and representatives bound to support the constitution.

quired as a qualification to any office or public trust under the United-States.

A R T I C L E V I I .

Ratification,
&c.

The ratification of the convention of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

T M E

T H E
DEFINITIVE TREATY,
O F
PEACE AND FRIENDSHIP*,
BETWEEN

His BRITANNIC MAJESTY and the UNITED-
STATES of AMERICA. Signed at *Paris*, the
3d of *September*, 1783.

*In the Name of the Most Holy and Undivided
Trinity.*

IT having pleased the Divine Providence Preamble.
to dispose the hearts of the most Serene
and most potent Prince George the Third,
by the grace of God, King of Great-Bri-
tain, France, and Ireland, Defender of the
Faith, Duke of Brunswick and Lunenburgh,
Arch-Treasurer and Prince Elector of
the Holy Roman Empire, &c. and of
the United-States of America, to forget all
past misunderstandings and differences that

* It were useless to set forth the several instances in which the treaty has been violated on the part of the states, the infraction of it having been admitted by congress in their public letter to the states, and by the states themselves by the repeal of those laws in consequence of it.

have

have unhappily interrupted the good correspondence and friendship which they mutually wish to restore ; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony ; and having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles signed at Paris, on the 30th of November, 1782, by the commissioners empowered on each part ; which articles were agreed to be inserted in, and to constitute the treaty of peace, proposed to be concluded between the Crown of Great-Britain and the said United-States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great-Britain and France, and his Britannic Majesty should be ready to conclude such treaty accordingly ; and the treaty between Great-Britain and France having since been concluded, his Britannic Majesty and the United-States of America, in order to carry into full effect the provisional articles above-mentioned, according to the tenor thereof ; have constituted and appointed, that is to say,

say, his Britannic Majesty, on his part, David Hartley, Esq; member of the parliament of Great-Britain; and the said United-States, on their part, John Adams, Esq; late a commissioner of the United-States of America, at the court of Versailles, late delegate in congress from the state of Massachusetts, and chief justice of the said state, and minister plenipotentiary of the said United-States to their High Mightinesses the States-General of the United Netherlands; Benjamin Franklin, Esq; late delegate in congress from the state of Pennsylvania, president of the convention of the said state, and minister plenipotentiary from the United-States of America, at the court of Versailles; John Jay, Esq; late president of congress, and chief justice of the state of New-York, and minister plenipotentiary from the said United-States at the Court of Madrid; to be the plenipotentiaries for the concluding and signing the present definitive treaty: Who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles:

A R T I C L E I.

Acknowledg-
ment of inde-
pendence and
sovereignty.

His Britannic Majesty acknowledges the said United-States, viz : New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina South Carolina, and Georgia, to be free, soveraign, and independant states ; that he treats with them as such ; and for himself, his heirs and succesors, relinquishes all claim to the government, propriety, and territorial rights of the same, and every part thereof.

A R T I C L E II.

Boundaries.

And that all disputes which might arise in future on the subject of the boundaries of the said United-States may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries viz : from the north-west angle of Nova Scotia, viz : that angle which is formed by a line due north, from the source of Saint Croix river to the Highlands, along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence,

rence, from those which fall into the Atlantic Ocean to the north-westernmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the river Iroquois, or Cateraquy; thence along the middle of the said river into lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and lake Erie; thence along the middle of said communication into lake Erie; through the middle of said lake, until it arrives at the water communication between that lake and lake Huron; thence along the middle of said water communication into the lake Huron; thence through the middle of said lake to the water communication between that lake and lake Superior; thence through lake Superior northward of the Isles Royal and Phelipeux, to the Long lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississip-

pi, until it shall intersect the northernmost part of the thirty-first degree of north latitude.—South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint river; thence strait to the head of St. Mary's river, and thence down along the middle of St. Mary's river to the Atlantic Ocean.—East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy to its source; and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence: comprehending all islands within twenty leagues of any part of the shores of the United-States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy, and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

ARTICLE III.

It is agreed, that the people of the United-States shall continue to enjoy unmolested, the right to take fish of every kind on the grand bank, and on all the other banks of Newfoundland : also in the gulph of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also, that the inhabitants of the United-States shall have liberty to take fish of every kind on such part of the coast of Newfoundland, as British fishermen shall use, (but not to dry or cure the same on that island) and also on the coasts, bays and creeks of all other of his Britannic Majesty's dominions in America ; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen islands, and Labrador, so long as the same shall remain unsettled ; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

Rights of the
United-States
to fish on the
banks of New-
foundland, &c.

A R T I-

A R T I C L E I V .

Recovery of
Debts.

It is agreed, that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all *bona fide* debts heretofore contracted.

A R T I C L E V .

Recommendation of Congress towards the restoration of confiscated estates, &c.

It is agreed, that the congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British subjects: and also of the estates rights, and properties of persons resident in districts in the possession of his Majesty's arms, and who have not borne arms against the said United-States: and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United-States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights, and properties as may have been confiscated: and that congress shall also earnestly recommend to the several states, a reconsideration and revision of acts or laws perfectly consistent, not only with

with justice and equity, but with that spirit of conciliation, which, on the return of the blessings of peace, should universally prevail. And that congress shall also earnestly recommend to the several states that the estates, rights, and properties of such last mentioned persons shall be restored to them, they refunding to any persons who may be now in possession the *bona fide* price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties since the confiscation.

And it is agreed, That all persons who have any interest in confiscated lands, either by debts, marriage, settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

A R T I C L E VI.

That there shall be no future confiscations made, nor any prosecution commenced against any person or persons, for or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty or property; and that those who
may

No future confiscations, &c.

may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

A R T I C L E VII.

Peace and restitution, &c.

There shall be a firm and perpetual peace between his Britannic Majesty and the said states, and between the subjects of the one, and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease; all prisoners on both sides shall be set at liberty, and his Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes, or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United-States, and from every port, place, and harbour within the same; leaving in all fortifications the American artillery that may be therein: And shall also order, and cause all archives, records, deeds and papers belonging to any of the said states, or their citizens, which in the course of the war may have fallen into the hands of his officers, to be
forthwith

forthwith restored and delivered to the proper states and persons to whom they belong.

ARTICLE VIII.

The navigation of the river Mississippi, from its source to the ocean, shall for ever remain free and open to the subjects of Great-Britain, and the citizens of the United-States.

The navigation of the Mississippi, &c.

ARTICLE IX.

In case it should so happen that any place or territory belonging to Great-Britain, or to the United-States, should have been conquered by the arms of either, from the other before the arrival of the said provisional articles in America, it is agreed that the same shall be restored without difficulty, and without requiring any compensation.

In case of conquest before the arrival of the treaty, &c.

ARTICLE X.

The solemn ratification of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties in the space of six months, or sooner, if possible, to be computed from the day of the signature of the present treaty.

Ratification, &c.

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In

In witness whereof, we, the undersigned, their ministers plenipotentiary, have in their name, and in virtue of our full powers, signed with our hands the present definitive treaty, and caused the seals of our arms to be affixed thereto.

Done at Paris, this third day of September, in the year of our Lord, one thousand seven hundred and eighty-three.

(L. S.) JOHN ADAMS,
(L. S.) D. HARTLEY. (L. S.) B. FRANKLIN,
(L. S.) JOHN JAY.

Legislative
acts founded
on justice and
public spirit.

That the treaty of peace has been violated in repeated instances on the part of the United-States, cannot be denied ; at the same time it is but bare justice to say, that many of their *later legislative acts* are founded in justice and public spirit.

It is visible in the repeal of those laws that violated the treaty.

In their consent to the payment of public and private debts.

In

In their consent to have but one common ruler relative to their interior commerce, and to reform the abuses that have crept into the feudeal system.

In their religious regulations, by which a civil and religious toleration is every where established.

In their laws which sanction the establishment of houses of education, and every thing that can contribute to the aggrandisement and convenience of commerce ; and above all in their liberation of slaves *.

* All the states have passed laws against slavery.

C H A P. XII.

*An Ordinance for the Government of
the Territory of the United-States,
North-West of the River Ohio.*

Descents and
power.

BE it ordained by the United-States in congress assembled, that the said territory, for the purpose of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances, may, in the opinion of congress, make it expedient.

Be it ordained by the authority aforesaid, that the estates of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children; and the descendants of a deceased child or grand-child, to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree: and among collaterals, the children of a deceased brother or sister of the intestate, shall have in equal parts among them their deceased

deceased parents share ; and there shall in no case be a distinction between kindred of the whole and half-blood, saving in all cases to the widow of the intestate her third part of the real estate for life, and one-third part of the personal estate ; and this law relative to descents and dower, shall remain in full power until altered by the legislature of the district ; and until the governor and judges shall adopt laws as herein after mentioned. Estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him, or her, in whom the estate may be, (being of full age,) and attested by three witnesses ; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person being of full age in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after ; proper magistrates, courts, and registers shall be appointed for that purpose. And personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents and the neighbouring villages, who have heretofore professed

Wills and other
disposition of
property.

fessed themselves citizens of Virginia, their laws and customs now in force amongst them relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, that there shall be appointed, from time to time, by congress, a governor whose commission shall continue in force for the term of three years, unless sooner revoked by congress.

He shall reside in the district and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Secretary.

There shall be appointed, from time to time, by congress, a secretary whose commission shall continue for four years, unless sooner revoked. He shall reside in the district and have a freehold estate therein of five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public laws of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings every six months to the secretary

tary of congress. There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction and reside in the district, and have each therein a freehold estate of five hundred acres of land while in the exercise of their office; and their commissions shall continue in force during good behaviour.

Court of justice,
&c.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states criminal and civil as may be necessary and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Publication of
laws, &c.

The governor for the time being shall be commander in chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Governor, &c.

Magistrates,

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Laws, &c.

For the prevention of crimes and injuries the laws to be adopted or made, shall have force in all parts of the districts, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may hereafter be made by the legislature.

Representatives, &c.

So soon as there shall be five thousand, free male inhabitants, of full age, in the district

district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly, provided that for every five hundred free male inhabitants there shall be one representative; and so on progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives, shall be regulated by the legislature; provided that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United-States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: provided also, that a freehold in fifty acres of land, in the district, having been a citizen of one of the United-States, and being resident in the district, or the like freeholds and two years resident in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years, and in case of the death of a representative; or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly or legislature, shall consist of the governor, legislative council, and a house of representatives, the legislative council shall consist of five members, to continue in office for five years, unless sooner removed by congress, any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit, as soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons resident in the district, and each possessed of a freehold in five hundred acres of land, and return their name to the congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each

each vacancy, and returns their names to congress, one of whom congress shall appoint, and commission for the residue of the term ; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons qualified as aforesaid, and return their names to congress, five of whom congress shall appoint and commission to serve as members of council for five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared ; and all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent ; but no bill or legislative act shall be of any force without his assent ; the governor shall have power to convene, prorogue, and dissolve the general assembly when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as the congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of

Members of
congress.

office, the governor before the president of congress, and all other officers before the governor, as soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority by joint ballot to select a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting during this temporary government.

And for the extending the fundamental principles of civil and religious liberty which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which for ever hereafter shall be formed in the said territory. To provide also for the establishment of states and permanent government therein, and for their admission to share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest.

It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and
for

for ever remain unalterable unless by common consent, to wit :

A R T I C L E I.

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

Articles of compact, &c.

A R T I C L E II.

The inhabitants of the said territory shall be always entitled to the benefits of the writ of *Habeas Corpus*, and of the trial by jury ; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate, and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or his property but by the judgment of his peers, or of the law of the land : And should the public exigencies make it necessary for the common preservation to take any persons property, or demand his particular

particular services full compensation shall be made for the same ; and in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with, or affect private contracts or engagements *bona fide*, and without fraud, previously formed.

A R T I C L E I I I .

Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall for ever be encouraged. The utmost good faith shall always be observed towards the Indians. Their lands and property shall never be taken from them without their consent ; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress : But laws founded in justice and humanity, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

A R T I -

ARTICLE IV.

The said territory and the states which may be found therein, shall for ever remain a part of this confederacy of the United-States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made ; and to all the acts and ordinances of the United-States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportionable part of the expences of government to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states ; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislature of the district, or districts, or new states, as in the original states, within the time agreed upon by the United-States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United-States in congress assembled, nor with any regulations

tions congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United-States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same shall be common highways, and for ever free, as well to the inhabitants of the said territory as to the citizens of the United-States, and those of any other states that may be admitted into confederacy, without any tax, impost, or duty therefore.

A R T I C L E V.

There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established, as follow, to wit: The western state in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north to the territorial line between the United-States and Canada, and by the
said

said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash, from Port St. Vincent's to the Ohio ; by the Ohio, by a direct line drawn due north, from the mouth of the great Miami to the said territorial line, and by the said territorial line, the eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan: And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the congress of the United-States, on an equal footing with the original states, in all respects whatever ; and shall be at liberty to form a permanent constitution and state government, provided the constitution and government so to be formed, shall be republican, and in conformity to the princi-

ples contained in these articles; and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ARTICLE VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall be duly convicted: Provided always that any person escaping into the same, from whom labour or service is lawfully claimed in any of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid.

Be it ordained by the authority aforesaid, that the resolutions of the twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be, and the same are hereby repealed and declared, null and void.

Done

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Done by the United-States in congress assembled, the thirteenth day of July, in the year of our Lord, one thousand seven hundred and eighty-seven ; and of their sovereignty and independence the twelfth.

C H A P. XIII.

Attornies, Barristers, &c.

THE mode of application for admission as an attorney or barrister in any of the PROVINCES is to the Attorney-general, to whom it is necessary to produce a certificate of qualification which must be an admission in some of our courts as an attorney or barrister.

In the UNITED-STATES the application is made to the Chief justice at his chambers in vacation, or to the bench of judges in term time, on motion by counsel. In some of the states application must be made to the legislature, the mode of admission is in some instances regulated by act of assembly, in others by rule of court.

The requisite qualifications are, admission as an attorney or barrister in some part of the British dominions, or at least a certificate of three years service under some gentleman of the profession, or a degree of doctor of laws taken in some one of the British universities; competent legal knowledge

ledge must also be certified on examination. In most of the states *two years previous residence* is also necessary. To which the states of Virginia and New-Hampshire are the only exceptions.

The fees on admission are on an average about *five guineas*. In Massachusetts they are as follows :—An attorney of the common-pleas *six pounds*; of the superior court *nine pounds*, and a barrister *twelve pounds*. One person may practice in all on taking out the several licences.

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O F T H E
P R I N C I P A L L A W Y E R S
I N T H E
B R I T I S H P R O V I N C E S , &c.
A N D I N T H E
U N I T E D - S T A T E S *.

Q U E B E C †.

WILLIAM Smith *, Esq. chief justice.
John Frazer, and }
Edward Southhouse, Esq. } P. judges.
James Monk, Esq. attorney-general.
J. Potts, Esq. judge of the admiralty.

* Names marked with a star are considered as particularly eminent.

† There are a great many other attorneys both in Q U E B E C and M O N T - R E A L , but in no other town of the province.

N E W -

NEWFOUNDLAND.

Nicholas Gill, Esq. judge of the vice-admiralty court.

NEW BRUNSWICK.

George Duncan Ludlow, Esq. chief justice.

Jonathan Blifs, Esq. attorney-general.

—— Chapman, Esq. solicitor-general.

Putnem, Allen, and Upham, Esquires.

P. judges.

Attornies	}	Hardy, Cray, Crawell, Clewett. Campbell.
resident at		
<i>St. John's</i>		
<i>Shelbourne,</i>		

NOVA SCOTIA.

G. Pemberton *, Esq. chief justice.

Isaac Descampes	}	Esqrs. P. judges.
Jas. Bunton,		

S. S. Bowers, Esq. attorney-general.

R. J. Uniache, Esq. solicitor and advocate general.

J. Sewell, Esq. judge of the vice-admiralty and court of appeals.

R. Bulkeley, Esq. assistant judge of the
vice-

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vice-admiralty court, and judge of the
court of Escheats.

HALIFAX.

Sterne—Taylor—and Aplin.

Attornice, &c.

WINDSOR.

Monk.

ST. JOHN'S, IN THE GULPH OF ST.
LAWRENCE.

Peter Stuart, Esq. chief justice.
Philip Calbeck, Esq. attorney-general.

CAPE BRETON,

R. Gibbons, Esq. chief justice.
D. Matthews, Esq. attorney-general.

JAMAICA *.

—— Grant, Esq. chief justice.
Robert Sewell, Esq. attorney-general.
Edward Long, Esq. judge of the vice-ad-
miralty court.
Counsel. Brown—Baker—Jackson, &c.

* The number of attornies in this island is about seventy,
and there are commonly twelve or fourteen barristers who
reside at Spanish Town.

BARBADOES.

Nathaniel Wicks, Esq. judge of the vice-admiralty court.

William Moore, Esq. attorney-general.

D. Maycock, Esq. solicitor general.

LEEWARD ISLANDS.

J. Stanley, Esq. attorney-general, and justice of the vice-admiralty court.

J. Burke *, Esq. solicitor general.

ST. CHRISTOPHERS.

Wm. P. Georges, Esq. chief justice.

ANTIGUA.

Rowland Burton, Esq. chief justice.

Edward Byam, Esq. justice of the vice-admiralty court.

MONT SERRATT.

Thomas Harum, Esq. chief justice.

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NEVIS.

NEVIS.

John Dament, Esq. chief justice.

VIRGINIA ISLANDS.

James Robertson, Esq. chief justice.

GRENADA.

J. Bridgewater, Esq. chief justice.

A. W. Byam, Esq. attorney-general.

K. P. Makenzie, Esq. solicitor-general.

Alexander Simpson, Esq. judge of the vice-admiralty court.

ST. VINCENTS.

Drury Ottley, Esq. chief justice.

Michael Keene, Esq. attorney-general.

R. Henville, Esq. solicitor general.

DOMINICA.

John Natson, Esq. chief justice.

Thomas Daniel, Esq. attorney-general.

Thomas Yeo, Esq. solicitor general.

Alexander Stuart, Esq. justice of the vice-admiralty court.

BAHAMA

BAHAMIA ISLANDS.

Steph. Delany, Esq. chief justice.
Jof. Talkall, Esq. J. of the vice-admiralty
court.
J. R. Wegg, Esq. attorney-general.

BERMUDAS.

And. Cafneau, Esq. J. vice-admiralty court.
Daniel Leonard, Esq. chief justice.
J. G. Palmer, Esq. attorney-general.

NEW SOUTH WALES.

D. D. Collins, D. J. advocate.

THE UNITED STATES.

GEORGIA.

In *Savannah*, George Walton *, Esq. Baldwin *, Stephens, Houston, Pendleton, Jackson.

In *Augusta*, Few, Sullivan.

SOUTH CAROLINA.

Charlstown.——Judges, Burke, Pendleton, Grimkee; Alexander Moultrie, attorney-general; Pinckney *, Rutledge *, Holmes, Gibbs, *Ninety-six*, Shaw, &c.

NORTH CAROLINA.

Judges, Ashe, Williams, and Spencer.

Wilmington, Jones *. Mc'Lean.

New Bern, Nash *.

Edenton, Jerdale, Johnson.

Hillsborough, Alexander Moore, Hooper.

Fayette-Villa, Lightfoot and Haye.

Halifax, Martin, &c.

VIRGINIA.

Williamsburgh, Wythe *, Lions.

Richmond, Patni*, Henry, Randolph*.

Petersburgh, G. Baker*.

Norfolk, Robinson.

Portsmouth, Nevison.

MARYLAND.

Baltimore, L. Martin, Esq. attorney-general.

—— Jennings, Stone, Thomas Chase,
Edmund Kelley.

DELAWARE.

Killin, Esq. chief justice.

Counfel, Rede, Vining, Beckford, O'Conner.

PENNSYLVANIA.

Mr. Kean, chief justice.

Bryan and Athe, p. judges.

Bradford*, attorney-general.

PHILADELPHIA.

Lewis, Wilson, Dallas, Ingersole.
Lancaster, Yates and Chambers.
York, Hartley, &c. &c. &c.

NEW JERSEY.

D. Beasley, Esq. chief justice.
Elizabeth, J. Blamfield, attorney-general.
Town, Elias Bondinott *.

NEW YORK.

R. Morris, Esq. chief justice.
C. Livinstone, Esq. chancellor.
New York, Hamilton *, Bird, Cutting.
Cloveral, J. Bay.
Hudson, Gilbert and Spencer.
Kenderhook, Vanskirk.

CONNECTICUT.

It is said that there are three hundred practicing lawyers in this state, among the first names are those of, Edwards, Seymour, Johnson and Chauncey.

RHODE

